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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI, ST. JOSEPH DIVISION.

APPENDIX TO APPELLANT'S BRIEF.

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January, 1936.

THE BLAKEMORE-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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STATUTES INVOLVED.

The pertinent provisions of the *Packers and Stockyards Act, 1921,* (U. S. C. A. tit. 7, secs. 181-229) are as follows:

§201. **"Stockyard owner"; "stockyard services"; "market agency"; "dealer"; defined.** When used in this chapter—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying or selling on a commission basis or otherwise, marketing, feeding, watering,

holding, delivery, shipment, weighing, or handling in commerce, of livestock; (Aug. 15, 1921, c. 64, §301, 42 Stat. 163.)

§202. "Stockyard" defined; determination by Secretary as to particular yard. (a) When used in sections 201 to 217, inclusive, of this chapter the term "stockyard" means any place, establishment, or facility commonly known as stockyards, conducted or operated for compensation or profit as a public market, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. Sections 201 to 217 inclusive of this chapter shall not apply to a stockyard of which the area normally available for handling livestock, exclusive of runs, alleys, or passage ways, is less than twenty thousand square feet. (Aug. 15, 1921, c. 64, §302, 42 Stat. 163.)

§205. General duty as to services. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard: *Provided,* That in any State where the weighing of livestock at a stockyard is conducted by a duly authorized department or agency of the State, the Secretary, upon application of such department or agency, may register it as a market agency for the weighing of livestock received in such stockyard, and upon such registration such department or agency and the members thereof shall be amenable to all the requirements of this chapter; and upon failure of such department or agency or the members thereof to comply with the orders of the Secretary under this chapter he is authorized to revoke the registration of such department or agency and to enforce such revocation as provided in section 216 of this title. (As amended May 5, 1926, c. 240, 44 Stat. 397.)

§206. Rates and charges generally; discrimination. All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful. (Aug. 15, 1921, c. 64, §305, 42 Stat. 164.)

§208. Unreasonable or discriminatory practices generally. It shall be the duty of every stockyard owner and market agency to establish, observe, and enforce just, reasonable, and nondiscriminatory regulations and practices in respect to the furnishing of stockyard services, and every unjust, unreasonable, or discriminatory regulation or practice is prohibited and declared to be unlawful (Aug. 15, 1921, c. 64, §307, 42 Stat. 165.)

§210. Proceedings before Secretary for violations generally; action to enforce order of Secretary. (c) The Secretary may at any time institute an inquiry on his own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before the Secretary, by any provision of sections 201 to 217 inclusive of this chapter, or concerning which any question may arise under any of the provisions of sections 201 to 217 inclusive of this chapter, or relating to the enforcement of any of the provisions of sections 201 to 217 inclusive of this chapter. The Secretary shall have the same power and authority to proceed with any inquiry instituted upon his own motion as though he had been appealed to by petition, including the power to make and enforce any order or orders in the case or relating to the matter or thing concerning which the inquiry is had, except orders for the payment of money. (Aug. 15, 1921, c. 64, §309, 42 Stat. 165.)

§211. Order of Secretary as to charges or practices; prescribing rates and practices generally. Whenever after full hearing upon a complaint made as provided in section 210 of this chapter, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged,

and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed. (Aug. 15, 1921, c. 64, §310, 42 Stat. 166.)

§214. When orders effective generally. Except as otherwise provided in this chapter all orders of the Secretary under sections 201 to 217 inclusive of this chapter, other than orders for the payment of money, shall take effect within such reasonable time not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction. (Aug. 15, 1921, c. 64, §313, 42 Stat. 167.)

§215. Failure to obey orders generally; punishment. (a) Any stockyard owner, market agency, or dealer who knowingly fails to obey any order made under the provisions of sections 211, 212, or 213 of this chapter shall forfeit to the United States the sum of $500 for each offense. Each distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense. Such forfeiture shall be recoverable in a civil suit in the name of the United States.

(b) It shall be the duty of the various district attorneys, under the direction of the Attorney General, to prosecute for the recovery of forfeitures. The costs and expense of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. (Aug. 15, 1921, c. 64, §314, 42 Stat. 167.)

§217. Proceedings for suspension of orders. For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217 inclusive of this chapter. (Aug. 15, 1921, c. 64, §316, 42 Stat. 168.)

The provisions of law with respect to petitions seeking to suspend or enjoin orders of the Interstate Commerce Commission, made applicable to orders of the Secretary of Agriculture under section 217 above quoted, are contained in the sections (U. S. C., A. tit. 28, §§1 to 70) quoted below:

§43. Venue of suits relating to orders of Interstate Commerce Commission. The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term "destination" shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, c. 32, 38 Stat. 219.)

§44. Procedure in certain cases under interstate commerce laws; service of processes of court. The procedure in the district courts (a) in respect to cases for the enforcement, otherwise than by adjudication

and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money shall be as provided in sections 45, 45a, 47a, and 48 of this title and (b) in respect to cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission shall be as provided in sections 45, 45a, 46, 47, 47a and 48 of this title. The orders, writs, and processes of the district courts may in the cases specified in this section and in the cases and proceedings under sections 20, 43 and 49 of Title 49, run, be served, and be returnable anywhere in the United States. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

§45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases. The jurisdiction of the district courts of the cases specified in section 44 of this title, and of the cases and proceedings under sections 20, 43 and 49 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged

in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. (June 18, 1910, c. 309, §1, 36 Stat. 539; Mar. 3, 1911, c. 231, §209, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

§46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. (June 18, 1910, c. 309, §3, 36 Stat. 542; Mar. 3, 1911, c. 231, §208, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)

§47. Injunctions as to orders of Interstate Commerce Commission; appeal to Supreme Court; time for taking. No interlocutory injunction suspending or restraining the enforcement, operation, or execution of, or setting aside, in whole or in part, any order made or entered by the Interstate Commerce Commission shall be issued or granted by any district court of the United States, or by any judge thereof, or by any circuit judge acting as district judge, unless the application for the same shall be presented to a circuit or district judge, and shall be heard and determined by three judges, of whom at least one shall be a circuit judge, and unless a majority of said three judges shall concur in granting such application. When such application as aforesaid is presented to a judge, he shall immediately call to his assistance to hear and determine the application two other judges. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the Interstate Commerce Commission, to the Attorney General of the United States, and to such other persons as may be defendants in the suit: Provided, That in cases where irreparable damage would otherwise ensue to the petitioner, a majority of said three judges concurring, may, on hearing, after not less than three days' notice to the Interstate Commerce Commission

and the Attorney General, allow a temporary stay or suspension, in whole or in part, of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of said judges pending the application for the order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judges making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The said judges may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until decision upon the application. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken direct to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction, in such case if such appeal be taken within thirty days after the order, in respect to which complaint is made, is granted or refused; and upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission the same requirement as to judges and the same procedure as to expedition and appeal shall apply. (Oct. 22, 1913, c. 32, 38 Stat. 220.)

§47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as

the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, §210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)

FIRST DECISION OF THE SECRETARY.

UNITED STATES OF AMERICA

BEFORE THE SECRETARY OF AGRICULTURE

BUREAU OF ANIMAL INDUSTRY

Docket No. 298.

Secretary of Agriculture
v.
St. Joseph Stockyards Company, Respondent

} Findings Conclusions and Order

I

PROCEEDINGS.

1. This proceeding is a general inquiry under the Packers and Stockyards Act, 1921, as amended, into the reasonableness and lawfulness of the rates and charges of respondent for the stockyard services rendered by it at its stockyard at South St. Joseph, Missouri.

2. The proceeding was initiated by an order of inquiry and notice of hearing issued by the Acting Secretary of Agriculture on October 9, 1929. Said order and notice alleged that respondent was engaged in the business of conducting or operating a stockyard at South St. Joseph, Missouri, which had been ascertained by the Secretary of Agriculture to be a "stockyard" within the definition thereof as used in Title III of the Packers and Stockyards Act, 1921, as amended, and which had been posted as such; that, in accordance with the requirements of said Act, respondent had theretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner; that on September 30, 1929, respondent made and published Tariff No. 5, which was filed with the Bureau of Animal Industry to become effective October 10, 1929; and that a proceeding under Title III of the Packers and Stockyards Act, 1921, as amended, should be had for the purpose of determining the reasonableness and lawfulness of said schedule of rates and charges as set out in Tariff No. 5. Accordingly, it was ordered that a hearing upon the reasonableness and lawfulness of said rates and charges be held at a time and place

specified in said order and notice. Notice of such hearing was given to respondent by serving upon it a copy of said order and notice.

3. Pursuant to the aforesaid order and notice, a hearing was held at St. Joseph, Missouri, before an examiner designated by the Secretary of Agriculture, which hearing began on the 2nd day of December, 1929, and was concluded on the 17th day thereof. Respondent was present by counsel throughout the hearing. Oral argument was had before the Acting Secretary of Agriculture, on the 13th and 14th day of May, 1930, and respondent submitted a brief. The matter is now before me for decision.

4. On February 11, 1931, respondent filed in this proceeding a petition praying that, for the reasons therein stated, an order be entered re-opening this proceeding and that this proceeding be set down for further hearing on the matters stated in the petition.

THE SERVICES RENDERED BY RESPONDENT AND THE RATES CHARGED THEREFOR.

5. There exists at St. Joseph, Missouri, a livestock market occasioned by the custom of producers and others who have meat, and to some extent, draft animals to dispose of, to ship them either by rail or truck to that place to be offered for sale to the various classes of buyers who congregate there. Chiefly such buyers comprise (1) local packers, whose plants are located at St. Joseph; (2) local butchers, who cater principally, if not exclusively, to the local demand for dressed meats and meat products; (3) order buyers, who purchase for packers located at points other than St. Joseph and for feeders and finishers of livestock; (4) dealers or traders, who purchase on their own account and usually for the purpose of selling at a profit without slaughtering or fattening or finishing to any considerable extent; and (5) the feeders and finishers, some of whom operate, either within or nearby the property of respondent, facilities known as feed lots, feed yards or feed barns and others of whom take the livestock to their farms for the feeding and finishing. The activities conducted by or through these various classes of purchasers are, when considered collectively, usually denominated "the buying power of the market."

6. The producers and others shipping livestock to market for sale generally, though not always, operate through

agents known as "commission men." The sellers and their agent are usually spoken of collectively as "the selling side of the market."

7. Respondent, the St. Joseph Stock Yards Company, provides the physical facilities which constitute the market place and renders certain services, hereinafter more fully described, in connection with the livestock which (other than livestock fed in transit and direct shipments to packers and feeders) comes there primarily to be marketed and only secondarily to be warehoused, fed, watered and otherwise attended to.

8. Respondent, in common with others interested in the market, has encouraged and promoted its development. Respondent's contribution has been chiefly in assisting the strengthening of the buying power of the market through aid in bringing in additional buyers. It also has expended considerable effort in inducing additional shipments to the market by those who have livestock to sell.

9. Respondent's specific functions are threefold. First, the provision of a market place; second, the provision of a depot for the unloading and loading of livestock brought to the market by railroads and by motor trucks or other vehicles; and third, the warehousing of the livestock so brought to market.

10. Incidental to its furnishing of a market place, respondent provides two office buildings within the stockyard area in which buildings the various classes of buyers and the representatives of the sellers can and largely do have offices for the transaction of their businesses. The actual buying and selling of livestock is not, however, done in these buildings but in the yards among the pens where the animals are held. There are, of course, other tenants in these office buildings, such as insurance companies, the inspectors of brands of cattle, feed concerns, a bank, and representatives of the United States Government. Respondent also has its offices in one of the buildings. The larger of these buildings is known as the Exchange Building and the smaller as the Annex.

11. Respondent's function as a livestock depot requires it to provide (1) docks for loading and unloading, which are long narrow platforms adjacent to and parallel with the tracks of the St. Joseph Belt Railway Company and raised to a height practically level with the floors of stand-

ard livestock cars; (2) chutes, which are inclined walkways for livestock leading down from the aforesaid docks; (3) chute pens, which are fenced enclosures into which the above described chutes lead and which are used to hold the livestock until it can be driven to the pens called "sales pens," where it is warehoused by respondent and exhibited for sale by the owner or his representative; (4) an alley, which is a narrow, paved drive-way used in driving the livestock from the "chute pens" to the "sales pens;" and (5) a similar arrangement of docks at the level of truck floors as well as chutes, pens, and an alley for unloading livestock brought to the stockyard by truck and for loading animals dispatched therefrom by the same mode of conveyance.

12. That portion of respondent's property which is devoted to its function of warehousing livestock is reminiscent of a city for human habitation in that mostly it is divided into blocks surrounded by paved runways, called "alleys;" and the blocks are divided into fenced and paved pens designed to keep separate the livestock of different owners. Collectively the pens devoted to the warehousing of a single species of livestock are called a "division." There also are "divisions" within "divisions." For example, the "cattle division" is divided into the "commisson dvision," wherein the livestock of the "original shippers" is warehoused, and the "traders division," wherein livestock which has been purchased by the traders or dealers and is being held for resale by them is warehoused by respondent. The hog and sheep divisions are roofed, but the cattle division is open or unroofed. Again like a city there are certain conveniences, such as an elaborate system of sewers for draining the pens, a water system providing running water to a trough in each pen, a system of electric wiring and fixtures for lighting the pens, alleys, etc.; a feeding and bedding service, requiring storage barns for hay feeds, and bedding, elevators for grain feeds, feed carts and horses or tractors, feed bins, feed racks or mangers, etc.; manure disposal, requiring horses and carts or tractors and trailers and a small plot of ground without the stockyard as a place whereat to dump the manure in a public sewer; what may be termed a "health service" employing an immunizing plant whereat hogs sold in the yard for shipment to the country for stocking or feeding purposes are immunized against certain diseases; dipping vats wherein cattle and sheep are immersed in solutions which

rid them of certain skin diseases and parasites; and some other "services" of a more minor nature.

13. In the foregoing description the facilities used by respondent in the performance of each of its several functions have been allocated in a general way to the respective function as to which they chiefly are employed. However, there is no clear, sharp line of demarcation. For instance, certain portions of the Exchange Building and its Annex may be devoted from time to time to uses partaking more of the warehousing function than that of providing a market place, the alley assigned to the livestock depot function is also used in connection with the warehousing function, certain pens usually associated with warehousing are used at times in performing the livestock depot function and parts of the facilities devoted to the sewer, water, light, feeding and bedding, manure disposal, and health "services" serve jointly in the performance of all three functions.

14. Respondent's stockyard is surrounded by the tracks of the St. Joseph Belt Railway Company, a corporation which, at the time of the hearing, was a subsidiary of the respondent. Over its tracks the livestock which comes to St. Joseph by way of the various trunk line railroads is brought to the unloading docks above described. There respondent, acting as servant of the trunk line or line haul carrier, unloads it over the unloading docks, down the chutes and into the chute pens. This service is performed under contract with the railroads and for it respondent receives from the respective railroads one dollar per car.

15. Respondent assumes responsibility for driving livestock from the chute pens to the sales pens of the respective consignees and placing it therein. This operation is frequently designated "yarding the livestock." However, there is a verbal agreement between respondent and the "commission men," who are the usual consignees of the livestock, that the latter will "yard" all livestock consigned to them which arrives after the hour of seven a. m. The "commission men" make no charge to respondent for so doing. The record indicates that the "commission men" do not always yard such livestock. The greater volume of the livestock arrives before the hour of seven a. m., hence, respondent actually does the greater part of the "yarding" of livestock which arrives by rail. The greater part of that arriving as so-called "drive-ins" appears, how-

ever, to be yarded by the consignee. Tests made of a week in January in the years 1927, 1928, and 1929, respectively, show that in 1927 77.64%, in 1928 59.6% and in 1929 61.3% of the livestock arriving by rail was yarded by respondent, while for 1928 18.9% and for 1929 29.5% of the driven-in livestock was so yarded. There is no showing as to the amount of driven-in livestock yarded by respondent in the year 1927.

16. When the livestock is placed in the sales pens the consignee or his agent, the commission man, usually the latter, takes charge of it, orders feed for it, sorts it, shows it to prospective purchasers, sells it, and drives it to the scales maintained by respondent, where it is weighed by respondent. By the custom of the market, title to the livestock passes to the purchaser when the animals are driven off the scales. The charges of the commission men for these and other services rendered their principals are, under the law, subject to regulation by the Secretary of Agriculture.

17. For the services rendered by respondent in warehousing the livestock from the time it leaves the railroad chute pens or is received at the drive-in division, until it is driven off the scales, including such driving as is done by respondent, the counting, checking, and keeping record of the number and identity of the livestock in each consignment, the furnishing of water, and the weighing, respondent charges to the owner of the livestock who brought, or caused it to be brought to market, usually called the "original shipper," the following rates:

Cattle	35c per head.
Calves (cattle weighing 400 lbs., or less)	25c per head.
Hogs	12c per head.
Sheep and goats	8c per head.
Horses and mules	35c per head.

In addition to the above yardage charges, which apply whether the livestock comes to the stockyard by rail, on foot, or in vehicle, a charge, stated in respondent's schedule to be for the use of special facilities, is assessed against all livestock received in vehicles, such as automobile trucks and wagons, as follows:

Cattle	5c per head.
Calves	2c per head.
Hogs	2c per head.
Sheep and goats	2c per head.
Horses and mules	5c per head.

The above stated charges, usually designated "yardage charges" are considered as covering the warehousing of the livestock throughout its stay in the stockyards regardless of the duration thereof or the number of changes of ownership which occur, the exception being that on livestock resold in the commission division one-half of the above rates additional is charged.

18. Dealers or traders and others who have purchased livestock in the stockyard sometimes place it with a "commission man" to be resold. Such livestock is said to be "planted" and sometimes it is referred to as "seconds." When such livestock is resold, respondent charges to the vender thereof the one-half rates mentioned in the preceding paragraph. No such charge is imposed when the dealer or other owner resells, without the intervention of a "commission man," livestock which he has purchased in the stockyard.

19. When livestock comes to the market and, for any of a number of reasons, is forwarded or driven to the country without being sold or weighed no yardage charge is imposed.

20. Some livestock comes to the stockyard consigned directly to packers and other users under circumstances such that it is not sold in the stockyard. The yardage charges detailed above are assessed against this livestock and imposed upon the person who causes it to come to the stockyard.

21. It is evident that the theory upon which the schedule of rates and charges is constructed is that whosoever causes livestock to come to the stockyard shall pay yardage charges, which are in effect an entrance fee and that thereafter no further yardage charges should be imposed, except in case of livestock resold in the commission division. Inasmuch as the producer of livestock either directly or through the country livestock buyer, causes the great bulk of the livestock to come to the stockyard, the burden of maintenance of the stockyard properties and services through the payment of yardage charges falls most heavily upon him.

22. When the livestock has been weighed and title has passed from the original shipper, as hereinbefore described, the nature of its further handling by respondent depends upon the class of purchaser who has acquired it.

23. If the purchaser be a local packer, the livestock is driven by respondent from the scales to a section of the cattle, hog, or sheep division of the stockyard, as the case may be, known as the "packers holding pens." There it is held in respondent's custody until such time as the packer who purchased it takes delivery of it and drives it out of the stockyard. These "packer holding pens" are approximately similar in physical characteristics to the so-called "commission division" where the "original shipper's" livestock is yarded, and practically the same services are rendered by respondent in connection with the livestock in the one as in the other, except that that in the "packers holding pens" is not usually fed or weighed. No charge is made to the packer for these services or the use of these facilities in connection with livestock which he has purchased in the stockyard.

24. If the purchaser be a dealer or trader, the livestock is driven by respondent, in most instances, to and yarded in pens allotted to the purchaser in those respective sections of the cattle, hog, and sheep divisions which are known as the "traders divisions." The physical characteristics of the "traders divisions" are substantially the same as those of the "commission divisions" and the services rendered by respondent with respect to the livestock warehoused in each do not differ materially. The livestock is held in the "traders divisions" until the trader sells or otherwise disposes of it. There respondent furnishes feed and water to it, making a charge for the former but not for the latter. There the trader shows it to prospective purchasers and usually sells it. Thence the trader drives it to the scales where it is weighed by respondent. For the use of these facilities and for these services respondent makes no charge to the trader.

25. If the purchaser be an "outside packer," as those packers who are not located at St. Joseph are designated, or a feeder, finisher, or breeder of livestock who is not located at or near the stockyard, the livestock is driven to the "shipping division" adjacent to the loading docks and there held until all things are in readiness for its loading out. Such loading is done by respondent in performance of its livestock depot function and for it respondent receives one dollar per car from the line haul carrier involved. For the driving to the holding pens and the use of those facilities respondent neither makes any charge or

receives any compensation other than the original yardage charge paid by the "original shipper."

26. The foregoing applies to livestock purchased to be shipped out by rail. That to be trucked out, either to a purchaser outside of St. Joseph or to a packer or butcher located in that city but not immediately adjacent to the stockyard, is driven to the truck-in division for the species involved and there held for the truck driver employed by the purchaser who, usually with respondent's assistance, loads it onto a truck.

27. If the livestock be purchased by or for the operator of a feed lot or barn adjacent to the stockyard it is driven from the scales to the purchaser's feed lot or barn either by respondent or the purchaser.

28. The service of driving livestock from the scales where it has been weighed to the point where it is to be loaded-out or delivered to the purchaser may be designated "re-yarding." Considering the operation as a whole, most of the re-yarding is done by respondent. Tests of a week in January in the years 1927 and 1928 show that in the former 89% and in the latter 92% of all re-yarding was done by respondent.

29. Hereinafter there is found a total area of 2,911,079 square feet as the used and useful land of respondent. On this area are situated nearly all of respondent's structures which are found to be used and useful. Of this total area 742,361 square feet, and the structures thereon, are directly and exclusively devoted to yarding livestock for the "original shipper"; 244,219 square feet are so devoted to yarding livestock for the traders or dealers and bring to respondent no revenue from yardage charges; 255,436 square feet are so devoted to holding for delivery to the packers the livestock purchased by them in the stockyard and such direct shipments of livestock as they may receive; 10,050 square feet are so devoted to holding for delivery to order buyers livestock purchased by them on the stockyard and yield to respondent no revenue from yardage charges; and the remaining 1,659,013 square feet and the structures thereon (except approximately 203,834 square feet of vacant land scattered in small plots among the pens and other structures) are used in connection with one or more of the above described warehousing services or with some other function of respondent. In saying that a certain

portion of the area is used directly and exclusively for a particular warehousing service it is meant that customarily it is so used. It should not be understood that that portion of the property is never used for any other purpose, for nothing in the stockyard is as static as that. The primary object is to take care of all the livestock which comes to the stockyard and in case of an extraordinary large volume of livestock being received, or other emergency, the usual customs and routines give way to the accomplishment of the primary purpose.

30. The portion of the 1,659,013 square feet of land, with structures thereon, which is devoted generally to the warehousing function is used jointly and interchangeably to such an extent with relation to warehousing for the "original shippers," the purchasers, the traders, and the order buyers, respectively, that it has not been allocated to the respective warehousing services rendered these respective classes of patrons. However, it seems fair to say that the relative proportions shown by directly used property are maintained with respect to the indirectly used property. Consequently, it appears that the "original shippers" use only approximately 60 per cent of that part of respondent's property which is used in the performance of respondent's warehousing function; the packers use approximately 20 per cent; the traders use approximately 19 per cent, and the order buyers approximately 1 per cent. Neither the traders nor the order buyers pay any warehousing or yardage charge for the use of the 19% and 1% respectively, the yardage paid by the traders being for use of the property in the "commission division."

31. Incidental to its functions of providing a livestock depot and a livestock warehouse, respondent provides feed and bedding for, and feeds and supplies it to the livestock in its custody, whenever such feed or bedding is ordered by the owner of the livestock or his agent. The feeds fed are principally (1) hay, both prairie and alfalfa; (2) corn; and (3) oats. The bedding is straw. Feed and bedding are suppplied to livestock both in the pens of the stockyard and in railroad cars. When supplied to pens, the charges are:

Hay, prairie	$1.25 per cwt.
" alfalfa	1.90 " "
Corn	1.60 per bushel measure
Oats	.90 " " "
Bedding (straw or hay)	.75 " bale

When feed and water are supplied to livestock in cars a charge of $1.00 per deck is made in addition to the above stated feed charges. In some instances hay is purchased in ton lots, delivered to the pens by respondent but fed by the purchaser. In such cases the charge per ton is $2.00 less than the above stated prices would indicate.

32. The difference between (1) the market price of the feed or bedding delivered at the stockyard and (2) the price paid for it by the owner of the livestock is spoken of as the "spread." For the year 1928 the average "spreads" on feeds and bedding sold for consumption in the stockyard (expressed in percentages of such market prices) were:

Hay, prairie	157 per cent
" alfalfa	88 " "
Corn	75 " "
Oats	55 " "
Bedding	181 " "

33. These "spreads" represent gross and not net profits, for handling costs, overheads, and other indirect costs have not been included. However, if such costs were deducted there would remain net profits in excess of what might properly be called the merchandising profits. There is no feeding done in the stockyards without charge, therefore the effect of these "spreads," in addition to providing a merchandising profit, is (1) to mitigate in part such inequality as may result from the failure to apply yardage charges to all persons who receive warehousing services, and (2) to some extent to give effect in charges to the element of time in the stay of the animal in the stockyard. Under the system of yardage charges now in vogue, there is paid on a consignment of livestock which is sold and removed from the stockyard within a few hours after its arrival the same charges as on a consignment which is warehoused for several days. Obviously the cost of the latter service is greater than of the former but probably it would be impracticable to attempt to graduate the yardage charge according to the length of time the animal is warehoused. Until some simple plan, not yet suggested, is discovered, so to do would introduce an intricacy and confusion in collecting such graduated yardage charge which would be defeative of the object sought.

34. The extent to which the time element in the warehousing of livestock is reflected in the increased income from feed and bedding is illustrated by the following facts:

While in the year 1928 there were sold in the commission division 41,372 cars of livestock and the purchase by dealers amounted only to 127,721 head of cattle and calves, 87,547 head of hogs, and 3,020 head of sheep, which, being reduced to carloads on the basis of 27 cattle, 70 hogs, and 125 sheep to a single deck car, amount to 6,004 carloads of livestock; nevertheless out of gross sales of feed and bedding made by respondent in the same year and amounting to $448,487.35, the commission men purchased for the livestock handled by them $257,800.34 or 57% of the whole, whereas the dealers purchased $107,445.01 or 24% of the whole, the remaining $83,242 or 19% of the whole having been used by respondent for its own animals and sold to a manufacturer of serum whose plant is situate near the stockyard.

35. Stated somewhat differently, while the commission men handled 87% and the dealers 13% of the market animals which consumed feed and bedding in the stockyard, the commission men purchased for such livestock only 70% and the dealers purchased 30% of all feed and bedding sold by respondent for consumption by market animals in the stockyard. This indicates that on an average each head of livestock was warehoused by respondent for the dealers for more than twice as long as each head was warehoused for the original shipper. It also indicates that any reduction in the "spreads" on feed or bedding will advantage that class of patrons whose livestock remains longest in the yard more than twice as much per head of livestock handled as it will those whose animals stay a shorter time.

36. By far the greater part of respondent's gross income results from yardage, feed, and bedding charges, the remainder coming from loading and unloading livestock, office rents in the Exchange Building, and certain incidental services and activities. In the year 1928 respondent's gross income for rate making purposes amounted to $809,108.59. Of this, $699,251.79, or 86.4% arose from yardage, feed, and bedding charges and was divided among those sources of income in the following proportions (the percentages being of the gross income for rate making purposes): Yardage $519,677.25, or 64.3%; "spread" or gross profit on feed sales $167,083.83, or 20.6%; and "spread" or gross profit on bedding sales, $12,490.71, or 1.5%. As a practical proposition under the law, respondent must be allowed rates which will produce sufficient gross income to result in a

fair return on the fair value of its used and useful property. The bulk of this income must be derived from yardage charges and the "spreads" or gross profits on the sales of feed and bedding. Therefore, as above stated, if the total stockyard charges be reduced and such reduction be applied to the "spreads" on feed and bedding, it will result that the cut will have been made at the point where the least benefit will result to the patron whose livestock occupies the stockyard the shorter time.

37. Respondent does not list in its schedule of rates and charges filed pursuant to the requirements of the Packers and Stockyards Act, 1921, the charges it makes for the services which next to yardage and the gross profits on feed and bedding, yield its greatest revenues; namely, (1) loading and unloading and (2) rents of space in the Exchange Building and in certain garages and rent of the Transit House Hotel. Of respondent's total income for rate purposes amounting to $809,108.59, loading and unloading yielded $52,011 or 6.4%, and rents brought in $46,108.33, or 5.7%. Of the rents $41,741.36, or 5.2% resulted from offices in the Exchange Building and .5% from garage space and the Transit House Hotel. The probable reason why these charges are not listed in its schedule is that respondent does not regard them as being for stockyard services, as defined in Sec. 301 (b) of the Packers and Stockyards Act, 1921.

38. The remaining $11,737.47, or 1½% of the gross income for rate making purposes, arose from certain incidental services rendered and activities engaged in. Of that amount $4,708.31 was derived from incidental services, the charges for which are listed in respondent's schedule as follows:

Service	Scheduled Rate	Income
Use of facilities for vaccinating hogs	10c per head	$ 4,238.40
Cleaning and disinfecting	See below	298.20
Dipping and spraying	" "	171.71
		$ 4,708.31

The cleaning and disinfecting charges apply "whenever it is necessary to clean and disinfect any portion of (Respondent's) pens by reason of the movement in or through the yard of livestock infected with contagious diseases."

In such case, the owner of such infected livestock must pay for disinfecting as follows:

Single pens	$2.50
Double pens	4.00
Chutes	2.50
Alleys (same ratio as pens)	.37 per 100 sq. ft.
Wagons and small trucks	.75 each
Trucks of 2 tons capacity and over	1.00 each

The income derived from cleaning trucks of manure and debris is separate from this. Respondent recites in its schedule of rates and charges that the dipping and spraying is done under supervision of the United States Department of Agriculture or the Missouri State Board of Agriculture and disclaims any responsibility for loss or damage occasioned thereby. Respondent furnishes the facilities, the dip, and the labor and charges therefor as follows:

Cattle	35c per head,	minimum	$35.00
Calves	15c " "	"	35.00
Hogs	5c " "	"	
Sheep	5c " "	"	8.00
Goats	5c " "	"	8.00

Under certain circumstances enumerated in the schedule, the minima per owner may be less than above indicated.

39. The remainder of the $11,737.47 mentioned in the preceding paragraph, namely, $7,029.16, was derived from a number of miscellaneous activities which either do not involve "rates or charges" or for which no rates or charges are listed in respondent's schedule.

40. Having analyzed the services rendered by respondent and the respective charges made therefor and having shown the income derived by respondent therefrom and the proportion of such income, where any, accruing from each service, it becomes pertinent to ascertain the reasonable costs of rendering those services. Necessarily preliminary to such ascertainment is consideration of the:

Used and Useful Character of Respondent's Property.

Land.

41. Respondent's land consists of 372,414 acres situate partly within and partly without that part of the city of St. Joseph, Missouri, which is known as South St. Joseph. For purposes of convenience in appraising and discussing this land, respondent has divided it into 17 "zones," 14 of which lie in Buchanan County, Missouri, without but adjacent to the corporate limits of St. Joseph, and are desig-

nated by the letters A to N, both inclusive, and three of which are situate within and adjacent to the corporate limits of St. Joseph and are designated by the numerals 1, 2 and 3, respectively.

42. Respondent concedes that its Zones F-1, G, H, I, J, K, L, M, 3, and all of its Zone N, except .84 acre or 36,000 square feet, which zones contain in the aggregate 184.05 acres, are neither used nor useful for the rate making purposes involved in this proceeding. It contends, however, that the lands embraced within its Zones A, B, C, D, E, F, and 1 and 2, together with the structures thereon, are both used and useful for the aforesaid purposes. Accordingly, each of the zones last above named is herein discussed separately with respect to its used and useful character.

Zone A.

43. Respondent's Zone A contains 74.72 acres or 3,254,803 square feet. It is on this zone that respondent performs the three functions heretofore described of providing a market place, a livestock depot, and a warehouse for livestock. On it are located the entire cattle, hog, and sheep divisions, the Exchange Building and its annex, runways and viaducts for livestock barns, and elevators for feed, the loading and unloading facilities, and the various other properties usually employed in the operation of a stockyards. Of this zone 2,858,889 square feet are found to be used and useful in the rendition of those stockyard services the reasonableness of the rates for which is being determined. This area includes 203,834 square feet or approximately 4.68 acres of vacant land which at the time of the hearing was not being used for any purpose. This vacant land consists of small parcels interspersed among the pens, alleys, runways, buildings, etc. For the reasons hereinafter discussed, the inclusion of these vacant parcels in the used and useful property is not, as land for expansion but because of the impracticability of excluding small parcels interspersed in the used and useful property. It is to be observed, however, that if and when respondent extends its facilities over 4.68 acres of land more than it occupied at the time of the hearing it still will be using an area no greater than that for which allowance is herein being made in the rate base. The remaining 395,914 square feet of this zone are devoted to the following uses and purposes:

44. At the time of the hearing 367,000 square feet were leased to Rountree, Dutton, McKee, Nichols, and Davis, respectively, and used by the lessees as private feed lots. That is to say, these lessees purchase mostly, if not entirely, in the stockyard, livestock consisting principally of sheep but partly of cattle and remove it to their respective feed lots to be fed and finished, after which they return it to the sheep or cattle division of the stockyard where it is sold, mostly to the packers. While the livestock is in these feed lots, it is not in custody of the respondent nor is it fed or watered by respondent nor is the feed purchased from respondent. When it is returned to the stockyard for sale the owners of it, being the lessees of the feed lots, pay the same yardage charges imposed upon anyone who drives into the stockyard livestock of the same species. Respondent contends that the land involved in these feed lots is used and useful, primarily because it constitutes land for expansion and secondarily because of being devoted to these livestock feeding purposes.

Land for Expansion:

45. The claim for the inclusion of this land in the used and useful property as land for expansion is based on the reasoning that it would be bad management for respondent to dispose of all of its land except that now in actual stockyard use and if and when it needed to expand its facilities be confronted with the necessity of purchasing from an adjoining proprietor who may have placed extensive improvements upon the property and who, in any event, would be in a position to compel respondent to pay an unreasonably high price. The soundness of this reasoning from the standpoint of management of the business is not disputed. However, it is not the duty of the Secretary of Agriculture to manage respondent's business, but rather to ascertain the property and values which are to be included in the rate base as one of the elements in the determination of reasonable rates. It may be the best of management to hold this property in reserve for the time, if it ever comes, when it will be needed for the expansion of facilities, but there are three outstanding reasons why its value should not be included in the rate base. (1) Under the law of the land there is to be included property used and useful in the rendition of the service or services for which the regulated rates are being charged. This does not mean used or useful. The primary fact to be ascertained in this connec-

tion is whether the property is being used. If it is not being used, it is needless to inquire into whether it might, under some circumstances which may arise in the future, prove to be useful. This land is not now being used for any purpose other than the feeding of livestock, which use is hereinafter discussed. (2) The primary reason, from the standpoint of management, for holding this land is that its enhancement in value would probably exceed the aggregate of the necessary carrying charges on it, wherefore it is good business for respondent to retain it, paying those charges. If the value of this land be included in the rate base, it means that respondent's patrons, rather than respondent, must pay the carrying charges, except in so far as they may be borne by the contributions made by those who feed livestock upon it. If and when the land is brought into use and included in the base for the determination of rates it would be included at present-day values, it might be equitable for the respondent's present-day patrons to pay the carrying charges were it not for the probability that a number, at least, of those patrons will have ceased to patronize the stockyard before this land is brought into use and, therefore, would never receive any benefit from their contributions to the carrying charges on it. However, to include this land in the rate base now and, as no doubt would be done, to value it when brought into use at the value then obtaining would mean that respondent's patrons must pay the carrying charges over the period of inactivity and yet all benefit from so doing would result to respondent and none to its patrons. (3) The evidence in this proceeding shows clearly that over the period of the past 13 years respondent has made a net expansion of its facilities amounting to less than 3 acres. At this rate at least 17 years will have expired before respondent will have expanded over more than four additional acres and the value of more than that number of acres in excess of the present requirements of respondent is being included in the rate base.

46. By net expansion of less than 3 acres during the past 13 years it is meant that, by reason principally of changes in the manner of the coming of the livestock to market and the method of handling it in the stockyard, there have been brought into use during that period 12.22 acres of land which theretofore had not been devoted to any stockyard use and during the same period and for the same reason there had been retired from use 9.25 acres of land thereto-

fore devoted to stockyard uses, leaving a net increase of 2.97 acres. Except for the usual fluctuations from year to year due to livestock production cycles and similar causes, the receipts of livestock at respondent's stockyard over the period of 25 years to and including the year 1928 have remained practically stationary, and the indications are that that condition will continue over the immediate future. Therefore, even if it were correct in principle to include in the rate base the value of land held for expansion, the facts in this proceeding indicate no immediate need for such land.

Livestock Feeding Lots:

47. Respondent's claim that the value of this 367,000 square feet of land in its Zone A should be included in the rate base because it is used for the feeding of livestock, even though the Secretary of Agriculture should find that its possible use for expansion purposes does not warrant such inclusion, is based upon the following contentions: (1) That furnishing these feed lots is a stockyard service within the Packers and Stockyards Act; (2) That the feed lots are essential to shippers of livestock, it being argued that the custom of shippers of sheep from the range country to market their entire crop of lambs, only a part of which are ready for slaughter or suitable for shipment to the country to be finished, while the remainder consist of "heavy feeders" which must be finished at near-by feed lots, renders it essential to the shipper that respondent provide such feed lots; (3) That feed lots have increased the receipts at the market, the argument being that the improvement of the market for the "heavy feeders," as above mentioned, has caused more producers of lambs to patronize respondent's stockyard and thereby to increase the receipts of sheep at that yard; (4) That the feed lots have increased respondent's income, this being a natural corollary of the last mentioned argument and it being said in addition that the yardage charges paid on these lambs, when they have been finished and are taken into the stockyards to be sold, further increases respondent's income; and (5) that the feed lots bear their fair proportion of market charges, it being said that the total value of the property included in the sheep feed lots is $227,643, while the total rental is $7,020, and that if there be added the approximately $16,000 received from yardage when these lambs are driven back into the stockyards to be sold, the total revenue is $23,020 or a re-

turn of more than 10% per annum on the property used for this purpose.

48. It is not found necessary herein to determine the legal question as to whether the supplying by respondent of these feed lots is a stockyard service. Even if it be such, the value of the property involved would not necessarily become part of the rate base, because it would not necessarily be used or even useful in the rendition of those services the reasonableness of the rates for which is being determined.

49. The fact that the existence of these feeding activities near the stockyard tends to improve the market for lambs from the range country does not cause the value of the land involved to become a part of the rate base. The livestock market existing at St. Joseph involves an interdependent relationship between those who sell and those who buy. The theory that the purchaser of livestock should be given services at less than the cost of rendition and that the remainder of such cost should be included in the charges made to the sellers of livestock because the existence of the purchasers on the market is advantageous to the sellers, is just as fallacious as the proposition that the seller should receive services at less than reasonable cost and the remainder be paid by the purchaser because existence of the seller is essential to the business of the purchaser. It is evident that neither could exist without the other and that neither has a right to any degree of free service at the expense of the other on the theory that his presence is essential to the other's welfare.

50. There is no proven causal relationship between the establishment of these feed lots and the increase of receipts of sheep at the St. Joseph Stockyard since their establishment. The two may be merely coincidental or the result may have flowed from causes of which the feed lot operations are only one or even a minor one. If the value of these feed lots be included in the rate base on the theory that the advantage to the stockyard patron through the decrease of yardage charges brought about by increase of receipts offsets or exceeds the burden upon such patrons of paying as a part of the rates the difference between the income from the rental of these feed lots and the cost of rendering that service, it would be necessary to enter upon a much nicer comparison of benefits and burdens than the record in this proceeding permits. Also fluctuations from time to time in

the relativity of the benefits to the burdens logically would have the effect of periodically including the feed lots in and withdrawing them from the used and useful property. The determination of their character should not be founded upon such a speculative and unstable basis.

51. While the feed lot sheep which are returned to the stockyard for the purpose of being sold pay the regular yardage charges, it is not shown that they receive less than the regular yardage services. No reason is apparent why less charges should be imposed than upon sheep shipped to the stockyard from the feed lots of farmers in the country, many of which may originally have been purchased in the stockyard in the same manner as are the feed lot sheep. No distinction in principle is observed between the circumstances surrounding these feed lots and a situation in which respondent, owning a farm ten miles out in the country, leased it on condition that the lessee should use it for the purpose of feeding sheep purchased in the stockyard and should return all such sheep to the stockyard for resale. Yet respondent's manager gave it as his opinion that such circumstances would not cause the farm to become used and useful property for the purpose of inclusion in the stockyard rate base. Therefore, it is found that the above described area of 367,000 square feet within respondent's Zone A, together with the structures therein and thereon, is not used and useful in the rendition of the services for which are charged the rates, the reasonableness of which is herein determined.

52. In addition to the above described feed-lot area of 367,000 square feet, there are within respondent's Zone A (1) an alley between the Nichols and Davis feed lots having an area of 3,840 square feet; (2) three-fourths of the old southern cattle dock with an area of 21,300 square feet; and (3) that portion of the old southern cattle dead line which lies north and west of the Rountree feed lot and covers an area of 3,550 square feet.

53. The reasons given above for the exclusion from the rate base of the value of the feed lot lands and structures apply with equal force to the alley between the Nichols and Davis feed lots, which is used for the same purposes as the lots.

54. Formerly tick infested cattle from the South were permitted to be shipped in interstate commeree to the stock-

yard for immediate slaughter, but it was required by law that they be handled in facilities entirely separate from those used in the handling of so-called native cattle and it also was required that these special facilities be separated from the remainder of the stockyard by a strip of vacant and unusable ground known as the deadline. A few years ago it became unlawful to ship tick-infested cattle in interstate commerce for any purpose. Accordingly, this use of the special facilities was abandoned by respondent and to some extent other uses were found for them. The old southern cattle loading and unloading dock contains a total of 28,400 square feet. It is not now used for any purpose. One-fourth is interspersed with the used and useful land and has, therefore, been included with it. Three-fourths of it, containing 21,300 square feet, may in the same sense be said to be interspersed with the feed lot area. Likewise, the old southern cattle deadline is not now used for any purpose. That portion of it which is interspersed with the used and useful property is found to partake of the nature of that area. For the reasons above stated the aforesaid alley, three-fourths of the southern cattle dock, and that portion of the dead-line north and west of the Rountree feed lot, containing in the aggregate 28,690 square feet, are found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is herein determined.

Meter House:

55. Two-hundred and twenty-four square feet are covered by the meter house, which is leased to the corporation which supplies water to respondent. The use made of it is by that company rather than respondent. It is not used and useful for the rate making purpose involved in this proceeding.

Zone B.

56. Respondent's Zone B contains 17.09 acres or 744,440 square feet. Of this area 531,487 square feet are leased to the Anchor Serum Company and used by it in the manufacture of livestock serum, the remaining 212,953 square feet being included in what is known as the O'Connell Feed Lot where cattle are fed by a private lessee under much the same conditions as have been described with relation to the feed lots located on respondent's Zone A. Respond-

ent claims this land as used and useful for rate making purposes, primarily as land for expansion and secondarily because upon part of it is located a business manufacturing a product used by some of respondent's patrons and upon the remainder of it is a feed lot. The reasons heretofore given for not including in the rate base the value of lands held for expansion apply with even greater force to the cattle feeding lot within this zone. No reason whatever is apparent why the leasing of a tract of land to a lessee who produces an article used by respondent's patrons should cause the value of that land to be included in the rate base.. Therefore, all of respondent's Zone B, together with all structures therein and thereon, are found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone C.

57. Respondent's Zone C contains 22.91 acres or 997,960 square feet. Of that area 543,797 square feet are leased to two lessees who operate upon it cattle feeding lots substantially similar to the O'Connell Feed Lot above mentioned, 335,412 square feet are leased to one Akers and used for farm purposes, 21,600 square feet are covered by a lane lying between the feed lots and the farm land, 37,500 square feet lying between the southerly line of the leased area and the tracks of the St. Joseph Belt Railway are used as a roadway, 15,600 square feet are covered by the extension of Packers Avenue from Zone A across Zone C to the manure dump on Zone Red-N and the remainder is vacant land. Respondent claims that all of Zone C is used and useful as land for expansion and, as to a portion of it, because used for livestock feeding. These contentions have been disposed of in connection with Zone A. There appear no reasons for finding any of this zone used and useful except 15,600 square feet covered by the extension of Packers Avenue. Therefore, the aforesaid 15,600 square feet are found to be used and useful and all of the remainder of Zone C is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone D.

58. Respondent's Zone D contains 11.60 acres or 505,296 square feet. It is entirely vacant and unused for any purposes except that Swift and Company, a packer, maintains across it a steam pipe line between two parts of its packing plant. Being unused, it cannot be found to be used. Nevertheless, respondent contends that it is useful as a site for the location of a possible additional packing plant. There is no evidence of any such probable use of this land in the immediate future except that a small plant located in St. Joseph, Missouri, and already purchasing all its livestock in the stockyard has been contemplating locating nearer to the yard. Even though there were in immediate contemplation the location on this zone of a packing plant bringing a new buying demand to the market, there appears no reason why the patrons of the stockyard should be required to pay in rates the carrying charges on this land to the end that the stockyard or the incoming packer might profit by enhanced values obtained at the expense of the stockyard patron. Therefore, it is found that Zone D is neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone E.

59. Respondent's Zone E contains 10 acres or 435,600 square feet. This entire zone lies within the O'Connell Feed Lot above mentioned. It is claimed by respondent to be used and useful as a site for the location of a possible new packing plant and also because a livestock feeding operation is being carried on upon it. Both of these contentions have been disposed of in connection with the zones hereinbefore discussed. Therefore, Zone E is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone F.

60. Respondent's Zone F contains 47.47 acres or 2,067,793 square feet. Presently it is used for farming. Respondent claims that it is used and useful as a site for a possible large packing plant. What has heretofore been said with respect to Zone D applies with equal force to this

zone. Therefore, Zone F is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone Red-N.

61. Respondent's Zone Red-N contains .84 acre or 36,590 square feet. It is used for the purpose of dumping in a large city sewer manure from the stockyard and, therefore, is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone 1.

62. This zone containing .544 acre or 23,697 square feet lies within the business district of the city of St. Joseph which is known as South St. Joseph and is separated by rather extensive railroad tracks and yards from the stockyard area. Of this zone 15,805 square feet are occupied by a brick hotel building known as the Transit House, the remaining areas being devoted to a building a part of which is leased to an operator of a livestock market newspaper known as the Stockyards Journal and the remainder of which is leased to the operator of a harness shop. All of this zone together with the structures thereon is claimed by the respondent to be used and useful for rate making purposes.

Harness Shop and Stockyard Journal:

63. The contention with respect to the harness shop is that for those producers of livestock who bring it to market by truck it is convenient to have a store where they can purchase some of the supplies used on their farms. This contention would apply with equal force to any land in the vicinity of the stockyard owned by respondent and leased to the operator of a store selling any kind of article used by farmers. As to the portion of the building rented to the Stockyard Journal, the claim is that that livestock market paper is useful and advantageous to those who ship livestock to the stockyard and pay the yardage charges. If this be true, no reason is perceived why such users of this paper should not pay subscription rates adequate to enable the publisher to pay a rent equal to a fair return upon the fair value of the property he leases. Certainly any de-

ficiency should not be recouped by imposing it in the form of stockyard rates and charges upon patrons regardless of whether or not they find this paper useful to them. Therefore, this part of Zone 1 is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Transit House Hotel:

64. The building known as the Transit House was erected some years ago and at a time when passenger transportation facilities between South St. Joseph and the hotel area of St. Joseph were not so good as they now are. It appears to have been suited to the then conditions. Since that time patronage has declined and now it is leased to an operator for $100 per month under a contract whereby the operator's books are open to respondent's inspection and, if the revenues of the hotel business warrant, respondent may increase the rental. The rental so paid falls far short of yielding a fair return upon the fair value of this property, if its fair value be taken to be the cost of reproduction new less depreciation, to say nothing of its proportion of general overheads. Its chief present patronage is by those who drive trucks in which livestock is brought to the stockyards. These are not usually the owners of the livestock but persons engaged in the conduct of public trucking businesses. They come to the stockyard mostly late at night and it is necessary for them to find a place to sleep. They are prohibited by law from parking their trucks in the streets of St. Joseph. Apparently they are unable to or will not pay for the accommodation they receive rates adequate to yield a fair return upon the fair value of the property. They would be satisfied with less costly accommodations were such available. Respondent contends that having this accommodation for the truck drivers tends to induce them to come to its stockyard rather than some other; that the maintenance of this facility is advantageous to the shipper of the livestock, and therefore, that it should be included among the used and useful property. The hotel, including the 15,805 square feet of land which it occupies, is found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Zone 2.

65. Respondent's Zone 2 consists of 3.19 acres or 138,956 square feet. It adjoins respondent's Zone 1 and is covered by a brick barn formerly used for the warehousing of horses and mules sent to the stockyard to be sold. Since the cessation of that business, it has been leased to a private operator who uses it for sheep feeding purposes. For a few days each year the lessee surrenders to respondent possession of this property and respondent conducts in it without charge a livestock show, whereat boys and girls who are members of the 4-H clubs conducted under the Extension Service of the United States Department of Agriculture exhibit their livestock. Respondent contends that either or both of these uses render the property used and useful for rate making purposes. The contention with respect to sheep feeding is disposed of by what has been said in connection with the use of other zones for the same purpose. The conduct of this livestock show is of undoubted advantage to some, at least of the producers of livestock who patronize respondent's stockyard. Nevertheless, such benefits should be recognized by voluntary rather than imposed contributions. In other words, respondent should not be permitted to use its rate assessing power to impose upon its patrons charges which the patrons may or may not deem to be for his benefit but should leave the patrons' contributions to such worthy causes to the voluntary judgment and discretion of the patron. Therefore, respondent's Zone 2 is found to be neither used nor useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order.

Summary of Used and Useful Land.

66. A summary of the land owned by the respondent which heretofore has been classified as used and useful is as follows:

Respondent's Zone A—74.72 acres		3,254,803 sq. ft.
Not used and useful in Zone A:		
Meter House	224 sq. ft.	
Alley between Nichols & Davis Feed Lots	3,840 " "	
Three-fourths of Southern cattle dock	21,300 " "	
Dead line north and west of Rountree feed lot	3,550 " "	
Private feed lots	367,000 " "	395,914 " "
Used and useful land in Respondent's Zone A		2,858,889 sq. ft.
Packers Ave. across Respondent's Zone C		15,600 " "
Manure Dump in Zone N (.84 acre, Red-N)		36,590 " "
Transit House site in Respondent's Zone 1		15,805 " "
Total land found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order		2,926,884 sq. ft.

STRUCTURES.

67. The structures located in or upon lands hereinbefore found to be used and useful are also found to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order. All structures located upon lands hereinbefore found not to be used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order are also found not so to be used and useful.

Foot Subway.

68. Illinois Avenue is the only practicable avenue of approach to respondent's stockyard by pedestrians from the business section of South St. Joseph or who are travelling from other parts of the city of St. Joseph to the stockyards by trolley car. Those cars stop in South St. Joseph. Between that point and the stockyard rather extensive tracks of the Chicago, Rock Island and Pacific Railway Co., The Atchison, Topeka and Santa Fe Railway Co., the Chicago, Burlington and Quincy Railroad Co., and the St. Joseph Belt Railway Company cross Illinois Avenue. Frequently the crossing is blocked by temporarily standing or crossing freight trains. At such times the ingress and egress of pedestrians to and from the stockyard was prevented, except at the hazard of passing between the freight cars. Accordingly, there was constructed under an agreement between respondent and the railroads above named, except the St. Joseph Belt Railway Company, a concrete under-

pass, eight feet wide and eight feet high, in the clear, and extending parallel with Illinois avenue from a point in respondent's Zone A near the Exchange Building eastwardly to a point on the east side of the most easterly of the railroad tracks, a total length of 412 feet. The west entrance to this subway is located on respondent's Zone A, occupying 1,925 square feet. It, together with the land it covers, already has been included among respondent's used and useful land and structures in connection with Zone A. No other of respondent's land is covered by this subway. By the agreement under which it was built the costs of construction and maintenance were borne by respondent and the respective signatory railroads in the proportion of the lineal footage of the subway occupying their respective lands, including apparently with respondent's land that of it which is leased to the St. Joseph Belt Railway Company. On this basis the percentages of cost and maintenance agreed to be borne by each party are as follows:

The Rock Island Company	7.8883%
The Santa Fe Company	10.3156%
The Burlington Company	40.2912%
The Stockyards Company	41.5049%

69. Respondent claims that this subway is used and useful as a necessary means of ingress and egress to and from its stockyard by its employees and others having business with it, especially at certain hours of the day when a number of freight trains are operating upon the railroad tracks under which it passes. Undoubtedly this subway offers a safe means of passage under railroad crossings which are exceedingly hazardous at grade. While respondent probably would not be legally liable for accidents occurring upon the tracks of any of the railroads mentioned and it would seem that that portion under the tracks of the Belt Railway belongs more properly in that company's valuation than in respondent's, nevertheless it was neither claimed by nor allowed to the Belt Railway in its valuation and the usefulness of this underpass in safeguarding human life and facilitating ingress and egress to and from respondent's stockyard is apparent. No reason is perceived why the value of that part of it which was built by respondent should not be included in the rate base.

70. Therefore, such portion of this subway, namely 41.5049%, is found to be used and useful in the rendition

of the services for which are charged the rates the reasonableness of which is determined by this order.

VALUATION.

71. The following discussion will consider first the values of the used and useful lands and second the value of the used and useful structures.

Used and Useful Land.

72. Respondent's land was valued by three competent and well qualified appraisers engaged in the real estate business in St. Joseph, Missouri; one was employed by the Government for this purpose and the other two by respondent.

Zone A.

73. The Government's appraiser placed upon the land in this zone a valuation of 35¢ per square foot and respondent's appraisers put such valuation at 30¢. It is very clear from the record that all of these appraisers included in their valuation the going concern element inhering in the land because of its integration in, and use as a part of a going operating concern, namely, the stockyard. It is equally clear that in the mind of each of the appraisers this going concern element was valued at 15¢ per square foot. Hereinafter a separate allowance is made for going concern value, therefore, the value of the used and useful land in respondent's Zone A is found to be 25¢ per square foot, or a total of $714,722.25.

Zone C.

74. Each of the appraisers placed upon Zone C the value of 15¢ per square foot. Accordingly, that is found to be its value. Therefore, the used and useful land in Zone C has a total value of $2,340.

Zone Red-N.

75. On the map used by respondent's land appraisers a large tract was designated as Zone N. Thereafter respondent outlined this zone with yellow, indicating that it was not claimed as used and useful. However, there had been sold out of the southwest corner of Zone N a small tract, from which had been excepted the .84 acres used for

dumping manure. At the time of making the map this was overlooked. Subsequently it was outlined in red as indicating that respondent claimed it to be used and useful. The value claimed for it is the same as the remainder of Zone N. The Government appraiser found its value to be 10¢ per foot. Respondent's appraisers placed upon it a valuation of $3500 per acre, which is approximately 8¢ per square foot. Its value is found to be 10¢ per square foot or a total of $3,659.

ZONE 1.

76. This zone contains 23,697 square feet, only 15,805 of which are occupied by the Transit House Hotel. Respondent's land appraisers placed upon the entire zone an average value of 40 cents per square foot. The land appraiser employed by the Government was of the opinion that that part of it fronting on Illinois Avenue and occupied by the Transit House was worth 95 cents per square foot. Accordingly, the 15,805 square feet so occupied are found to have a value of 95 cents per square foot, or a total value of $15,014.75.

77. The total value of all of respondent's land heretofore found to be used and useful is $735,736.

Used and Useful Structures.

Cost of Reproduction New.

78. Respondent's used and useful structures were inventoried and appraised by engineers employed by the Government and by respondent, respectively. After a detailed comparison of their respective appraisals there was found no greater variation in estimated cost of reproduction new than one engineer would expect to find in two independent estimates of the same property, even though both had been made at the request of the same person. Accordingly, the engineers entered into a stipulation by which they recommended a finding of the cost of reproduction new of respondent's structures in an amount which would represent a mean between the amounts found by their respective appraisals. Accepting this recommendation of the engineers, the costs of reproduction new of the various items of used and useful structures is found to be $2,850,735. This total is composed of (1) cost of material and labor, $2,351,570, which includes what are commonly called construction over-

heads; (2) an allowance of 5% of the amount of materials and labor for omissions possibly unknowingly made in arriving at that item of cost and for contingencies which might to some extent increase that item, which allowance amounts to $117,579, making the total allowance on materials and labor $2,469,149; and (3) the following general overheads during construction:

Engineers, architects and supervision	5%	$ 123,457.00
Legal expense during construction....	1%	24,691.00
General office salary and expenses....	2%	49,383.00
Liability insurance 2% on labor of	$982,008	19,640.00
Taxes during construction, based on taxes actually paid by respondent for the year ending June 30, 1929		18,253.00
Interest at 7% for 6 months, being one-half of construction period		94,660.00
Interest on land during construction at 7% for one year ($735,736)		51,502.00
Making a total of		$ 381,586.00

79. The appraisers employed by the Government and respondent, respectively, were in agreement as to the propriety of including in the costs of reproduction new all of the above stated general overheads during construction, except that of interest on land during construction. Respondent's appraisers recommended its allowance, but the Government appraisers hold the contrary view. While it is true that interest on land during construction is not an element properly to be added to the present market value of such land, it is a necessary and inescapable cost of reproduction new of structures. Stockyard structures cannot be built and then moved to the land they are to occupy. The land must be in possession when the construction is started which means that money must have been invested in it or a liability for interest payments incurred. It would be exceedingly unwise to attempt to purchase the land in parcels as the construction progresses.

80. The appraisers employed by the Government and by the respondent were also in agreement as to the percentages on which the above stated general overheads during construction should be computed, except with respect to taxes during construction. This item is herein included in costs of reproduction new on the basis of the recommendation of the Government appraiser, which yields a higher figure than that of respondent's appraiser. The appraisers employed by the Government and by respondent, respectively, were in agreement that one year represented a reasonable period in which to accomplish the reproduction new of Respondent's structure.

Pre-Construction Overheads.

81. Respondent contends, however, that there should be included in the costs of reproduction new of its structures allowances of (1) $50,000 for what it terms "pre-organization expense," and which it says is necessary to be incurred prior to the beginning of the actual reconstruction of the structures; and (2) cost of financing. Respondent's contention as to the preorganization expense is based on the testimony of the witness, Burnell, who stated that it would include the investigation of the project, the estimates of the investment required to be made, the estimates of revenue to be derived from it, and the development of the information thus gathered into a completed unit of organization prepared to undertake actual construction; and that the cost of organizing the corporation would be only a comparatively small part of the amount estimated for this item, though it would be included. He stated that:

> "The chief element that would go to make up that expense would be the technical and administrative service in connection with the initial studies into the merit of the project. It is pretty much a matter of convincing yourself and preparing yourself to convince others that a stockyard was wanted."

The estimate of $50,000.00 was based on his judgment, said to have been obtained from experience. The appraiser for the Government was of opinion that the inclusion of this item in any amount in the capital values or the rate base would be improper. It is impossible to conceive of any legitimate way by which the actual cost of reproducing a structure would be increased by the difficulty which the reproducer encountered in persuading himself to enter upon the reproduction. To follow respondent's contention and the witness Burnell's theory to their logical result would lead to the conclusion that the patrons of a stockyard constructed by stubborn and cautious owners should pay higher rates than those of an actual similar stockyard built by men easy to convince. If the principle of fair return upon fair value is to continue as a guide to reasonable rates rather than become in effect destructive of rate regulation, some limit must be placed upon the inclusion in the rate base of values which represents little other than the flights of fancy of those seeking to obtain higher valuation. This so-called pre-organization expense is found to

be neither a cost of reproduction new nor an item proper to be allowed in the rate base.

82. Respondent's contention that there should be included in the cost of reproduction new of its property an item equal to 5% of the total value of its property, without including going value, is based upon the view that it would be proper for respondent to issue securities equivalent to such value and that it would cost approximately 5% to dispose of those securities. In other words, it is that respondent would raise sufficient money to buy its land and build its structures by selling securities at a selling cost of 5%. This contention also is based on the testimony of the witness, Burnell, who was of opinion that this item should be allowed regardless of whether those who construct the stockyard have the money or have to issue securities wherewith to obtain it, saying that,

> If the promoter has the necessary money he wouldn't have need to incur that expense, but he would be entitled to an allowance for it because that is what he would have to pay if he turned over that service to someone else.

83. This witness was also of opinion that this item should be included only once in the value notwithstanding the number of successive purchasers of the property and that each might have to incur the same expense for procuring the money wherewith to purchase it. It thus appears that, though, in the witness' opinion, this so-called cost enters into the value of the property, it is a value upon which the owner should not realize at time of sale. It also appears from the testimony of another witness called by respondent that when respondent's now outstanding bonds were sold only $940.00 was realized on each $1,000.00 bond. The Government appraiser, Henrici, was of opinion that it would not be proper to include this item in any amount in the rate base. Regardless of whether or not it should be included in the rate base, it certainly is true that the actual cost of reproduction of a property is in no wise changed by the amount of expense incurred in obtaining the money wherewith to pay for such reconstruction. It, therefore, should not be included as a reproduction cost. Neither should it be included in the rate base at all. The property used and useful in the rendition of the services for which the rates are charged is owned by those who purchased its securities, whether they were purchased at face

value or at a discount, and it is those people, rather than some mythical past promoter, to whom the law guarantees a fair return. The whole theory of fair return upon fair value as a basis for reasonable rates is that the worth of the outstanding securities should be equal to such fair value, whereby the holders of those securities would receive a fair return upon them. Herein there are being prescribed rates which will yield to the investor a fair return upon the fair base value of the securities rather than upon any discounted or market value at which he may have been able to purchase them. If, in addition to this, the amount of such discount be included in base values, it will result that respondent's patrons will be required to pay rates yielding more than the fair return hereinafter found. For these and other reasons which suggest themselves from the record in this proceeding, it is found that the so-called cost of financing does not enter into the cost of reproduction new and should not be included in the rate base.

Cost of Reproduction New, Less Depreciation.

84. Having determined the cost of reproduction new of the various units of the used and useful property, the most usual method of ascertaining the cost of reproduction new, less depreciation, is to find the per cent condition of each unit and multiply its cost of reproduction new by such percentage. There is, however, another method, in which cost of reproduction new, less depreciation, is procured by deducting from the cost of reproduction new of each unit a sum of money composed of (1) the estimated cost of replacing such parts of the unit as should be replaced, and (2) an estimate in money of the accrued depreciation in those parts of the structure which, though not sufficiently worn to warrant replacement, do show wear.

The two methods are not distinct, but each involves some elements, at least, of the other. They seem but slightly different methods of arriving at the same determination; namely, the proportion of the property which remains sound. The appraisal engineers for both the Government and the respondent used the first method described above. A consulting engineer called by respondent employed and recommended the second. On most of the used and useful structures the respective appraisal engineers found so little difference in their estimates of per cent condition that, by the stipulation mentioned above, they recommend the acceptance of the mean between their respective percentages.

85. The items of property as to which the engineers are closely in agreement as to the per cent condition relate largely to the pen areas now in active use. The record shows that as to this property both engineers pursue the same method, neither using the age and life method, which consists of ascertaining the age of a given structure and using that to discount a previously determined life expectancy for that class of structures. Both use the inspection method, which takes into account the age of the structure only as such age is indicated by present condition. And both depreciate each unit of property as a whole rather than by parts and then aggregating to find a composite for the structure. To illustrate: If the posts of a pen were found to be decayed but the boards sound, they did not find the condition per cent of the posts to be (say) 50 and that of the boards 100, but proceeded upon a basis that the condition of the posts also depreciated the value of the boards. These circumstances point to the fact that with respect to those units where the variations in estimating the condition per cent were so broad as to be desginated "irreconcilable" they arose from a difference in method rather than the personal element. Respondent engineer's action in respect to the pen areas was a concession to the views of the Government engineer in a spirit of harmony, rather than an expression of his own opinion. When he came to such important units as the Exchange Building, the foot subway, and so forth, he reverted to his own method, which was to estimate the condition per cent of the various parts of the buildings or structures and weight them into an average for the whole. To illustrate: He determined that the common brick work had suffered no depreciation. Therefore, he set it up as one hundred per cent. Similarly as to the floor joist. But if he found that the floor had suffered about one-fourth of all the wear it could stand, he set it up at 75 per cent. He did not consider inadequacy or obsolescence, because he was of opinion that neither could occur in the particular buildings or structures.

86. The Government engineer, on the other hand, considered that even the undeteriorated elements in a building, many of the parts of which had suffered from wear and tear, rust, rot, and decay, and against whose whole the inexorable factor of obsolescence, if not also inadequacy, was working suffered a depreciation in value.

87. When it was determined that there were certain items of property as to which the engineers could not agree upon the per cent condition, the Government engineer had two of his assistants make independent estimates. When these were returned they were compared with the original estimate and as to each item the highest figure was recommended by the Government engineers. As to those items of property on which the engineers are in agreement upon the condition per cent their recommendation is accepted. As to the items on which they are not in agreement the final figure recommended by the Government engineers is accepted. Accordingly, I find the per cent condition and the cost of reproduction new less depreciation of the used and useful property to be as follows:

	Average Per Cent Condition	Cost of Reproduction New Less Depreciation
Exchange Bldg. Area	74.776	$323,570
Cattle Division	81.564	613,019
Sheep Division	82.137	154,338
Hog Division	81.809	469,994
South of Hog Division	82.966	36,513
Company Stable	78.003	11,858
Transit House	73.000	117,877
General Items	83.049	49,258
Miscellaneous	71.984	23,808
Miscellaneous	84.564	77,575
Omissions and Contingencies 5%	79.854	93,891
Total	79.854	$1,971,701

Depreciation of General Overheads.

88. The appraiser employed by respondent was of opinion that the general overheads during construction depreciate. The consulting engineer, Burnell, called by respondent, and the Government appraiser, Henrici, were of opinion that such overheads do not depreciate. The opinion of each appraiser in this respect seems inconsistent with his method of ascertaining accrued depreciation and the resultant condition per cent of the property.

89. Undeniably, these overheads suffer no process of gradual wear and tear, rust, rot, and decay, but, like joist, which may go on unimpaired to the end of the life of the building, value goes out of these overheads when the structures come to the end of their usefulness. To the extent that the factors of depreciation have brought upon the structures a composite percentage of lessening in value,

these overheads have depreciated. It is true that when the structures have reached the end of their useful life there may remain a sort of "scrap value" in these overheads, in that possibly the architect's plans, or parts of them, could be used in the reconstruction, but the fact of the retention of such a value does not alter the conclusion that these overheads partake of the composite depreciation of the structures to which they relate. Therefore, it is found that the above enumerated overheads enter, in the following amounts, into and form a part of the cost of reproduction new, less depreciation, of respondent's structures which are used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order, as follows:

	Average Per Cent Condition	Cost of Reproduction New Less Depreciation
Engineering, Architects Supervision—5%	79.854	$ 98,585
Legal Expense during construction—1%	79.854	19,717
General Office Salaries and expense—2%	79.854	39,434
Liability Insurance during construction (on labor only—$982,008)—2%	79.854	15,683
Taxes during construction	79.854	14,576
Interest 7% for 6 months (one-half of construction period)—3.5%	79.854	75,590
Interest on land during construction	79.854	41,126
Total		$304,711

90. It is found that (1) the cost of reproduction new of all the respondent's structures which are used and useful in the rendition of stockyards services is $2,850,735; and (2) the cost of reproduction new, less depreciation, of all of respondent's structures which are used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order is $2,276,412.

Working Capital.

91. It was agreed at the hearing that $70,000 represented a fair amount for working capital. Accordingly it is so found.

Going Concern Value.

92. Respondent contends that in addition to any and all other values which may be included in the ascertainment of fair value, and the rate base, it is entitled to have al-

lowed and included an item of $667,000 as and for going concern value. Respondent's claim in this respect is based entirely upon the testimony of the witness Howson, an engineer who made an elaborate mathematical computation in an effort to show the amount or quantum of this so-called value; and upon the testimony of three of respondent's officers, who, together with four commission men doing business on the St. Joseph Stockyards, gave to Howson the speculations upon which he based his elaborate computation. The Government offered no evidence on this matter, except in rebuttal to show the feasibility of operating a stockyard during the period of construction and of caring for the business by temporary arrangements during such period.

93. The method recommended by the witness Howson, and which he called the Alvord, or comparative method, is an attempt to estimate the cost of reproducing the business which respondent now enjoys by assuming that some person or persons, desirous of operating a stockyard at St. Joseph, Missouri, found themselves in the peculiar position whereby they could purchase respondent's property and business as a going, operating concern or could construct exactly similar property and, if they decide upon the latter course, then respondent immediately would cease to operate its business. The witness adopts the one year construction period used by the valuation engineers as the basis for their calculation of certain overheads, such as interest during construction, and assumes that during that year all the business theretofore enjoyed by respondent would be dissipated. He then sets out to determine what it would cost the new concern to attach to its new stockyard the amount of business, and its resultant income, which respondent now enjoys. To do this, he seeks to ascertain the period of time which would elapse after the new yard began operations and before its receipts of livestock and resultant income would be equal to those now possessed by respondent. He also seeks to ascertain what percentage of respondent's present receipts of livestock would be recovered by the new yard during each year of the aforesaid period of recovery. He assumes that the expenses of the new company during each of those years would be the same as those of respondent during the test year in this proceeding, namely, 1928, and, deducting from such expenses the income expected to be derived from the

imagined receipts of livestock, ascertains the possible deficit during each of the recovery years. He aggregates the present worth of these supposed deficits into a total of approximately $667,000 and says that whether the new company built its own new yard at the cost of reproduction new shown in this record or purchased the existing yard with its attached business at the same cost of reproduction new plus $667,000 as going concern value, the ultimate cost to the new company would be exactly the same. Wherefore, he draws the conclusion that $667,000 is the fair value of the element of going concern in respondent's business.

94. In Valuation Docket 785, the St. Joseph Belt Railway, the Interstate Commerce Commission, addressing itself to this identical method testified to by the same witness, said:

> The analysis of the witness is so replete with assumptions and estimates as to render it worthless for all practical purposes. The whole method consists of a presentation in new form of an estimate of deficiency below a fair return which the carrier, if reproduced on valuation date, would suffer before it attained the status of a financially successful concern. The theory that the total amount by which the carrier's actual income during its early years fails to yield a fair return on the investment should be added as an element of value for rate making purposes was condemned by the Supreme Court in *Galveston Electric Company* v. *Galveston,* 258 U. S. 388. By the stronger reason, hypothetical deficiencies must also be rejected.

95. Respondent contends, however, that the witness Howson's method of estimating going concern value is no more speculative than that of the valuation engineers as to cost of reproduction new. Without analysis of the witness' elaborate procedure, this may appear to be true. But, the difference lies in this, that the quantities of material necessary to reproduce physical structures can be ascertained by the engineering processes of measurement and computation with reasonable mathematical certainty and almost wholly devoid of the element of guess and speculation. The present prices and costs of those materials delivered at the job can be found with approximately equal certainty; the present prices of union labor can be determined from lists maintained by the local unions; the amount of labor

probably to be required can be estimated from a wealth of experience of the particular valuation engineer and many others of his profession with respect to thousands of structures theretofore built, as can also the period of time required for the reconstruction and the amounts of the overheads which probably will be incurred. On the other hand, the witness Howson, while likening this estimate of the recovery of receipts to an engineer's estimate of the cost of constructing a physical property and saying that one is not more difficult or speculative than the other, admitted that in the case of estimates of reconstruction of physical property the engineer has the benefit of past experience whereas he had no such similar guiding star with respect to the recovery of stockyard receipts and had never gone through a stockyards business reconstruction, nor had any one else to his knowledge. Lacking this experience and its resultant knowledge, he sought from the three of respondent's officers and the four commission men above mentioned the required information as to the length of the recovery period and the rate of recovery of receipts of livestock during such period. Both he and they, in so far as they testified, admit that none of them has ever had any experience with recovery of the receipts and income of a stockyard or any other business. They suggested periods of recovery the average of which was approximately 8 years but he reduced it to 5 years and used that as his basic figure. They also suggested rates of recovery within the period which formed the basis of the rates used by him. Obviously this method is capable of expansion to produce any desired amount of going concern value by merely increasing the imagined period of recovery or slowing up the supposed rate of recovery. Inasmuch as no one has had any experience from which to form any judgment or estimate, no one could say that a period shorter than that estimated or a higher rate would be correct. For these and other reasons, the method suggested by the witness, Howson, for measuring going concern value is not adopted. His speculations and those of the other witnesses upon which he bases his computations are in no real sense evidence.

96. It is found that the going concern value of respondent's business and its property used and useful in the rendition of the services for which are charged rates, the

reasonableness of which is hereinafter determined, is $300,000.

Fair Value.

97. The fair value of respondent's property used and useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order consists of the aggregate of the values heretofore found for the various classes of such property, namely, $3,382,148.

Fair Rate of Return.

98. Respondent contends that, in calculating the reasonableness of its rates, there should be employed a rate of return of at least 11%. This is based on the hypothesis of a capital structure of 1/5 bonds, bearing an interest rate of 6%, and 4/5 common stock, paying dividends at the rate of 6%, leaving 5% to be added to surplus, and is supported by the opinion of a local investment banker who calculated a return, or company earnings, of 7.10% on the 1/5 represented by bonds and of 11% on the 4/5 represented by the common stock, making a total of 10.22% on the entire capitalization, which he regarded as the minimum fair return.

99. An economist of wide experience, who had devoted much study to the question, was of opinion that a return, or company earnings, of 7½ to 8% would be sufficient to enable respondent's securities to occupy in the field of finance a position comparable to, that is, to be on a parity with the securities of other sound public utilities and industrial corporations, so that investors seeking to invest their funds would regard respondent's securities in as favorable a light as those of any other sound corporation that might be considered; that under all the circumstances, both financial and what he knew of the operation of respondent's stockyard, rates which at the time of the hearing brought in 7½%, and perhaps a little shade under that, would be as low as would maintain the securities equal to the value of the property on a parity with other securities, and if the rates produced as much as 8%, they would be getting to the point where they might be so high as to impose excessive charges upon respondent's patrons; that, if the value of the property be approximately equal to that of the outstanding securities, a rate of 7½% would be in-

dicated; and that this rate, varying possibly from slightly below 7½ to 8%, is not the return in the form of dividends which respondent would pay to its security holders but is the return which it would earn in order that they might continue to receive interest and dividends.

100. It is obvious that in the above stated 7½ to 8% there has been included an allowance for the payment of current interest and dividends and also a sufficient annual addition to surplus reasonably to insure the continuity of interest and dividends over future periods during which the stockyard net operating income may be insufficient to pay the fixed interest and the adequate dividends. In view of the fact that over the period of the past 25 years respondent's volume of business has remained practically stationary and it appears that, but for cyclical fluctuations, it will remain so in the immediate future; and that from 1916 to 1928, inclusive, respondent regularly paid annual dividends, and six special and two stock dividends; it does not appear necessary that as much as 5%, or even the amount which would result if the necessary dividends upon respondent's common stock be assumed to be 8% instead of 6% be carried annually to surplus. For these reasons, and others which suggest themselves from the record in this proceeding, it is found that 7½% constitutes and is a fair rate of return upon the fair value hereinbefore found for the used and useful property of respondent.

Income and Expenses.

Income.

101. Unless otherwise indicated, the word "income," when used in the discussion under this heading, denotes gross or total revenue from a particular activity or from respondent's activities as a whole.

102. Respondent's total income for the year 1928 as set up on its books was $862,507.44, of which $809,108.59 was derived from the activities engaged in in rendering the services for which are charged the rates the reasonableness of which is determined by this order and activities intermingled with them. The remaining $53,398.85 was derived from activities neither forming part of nor intermingled with the rendering of the services for which are charged the rates the reasonableness of which is determined by this order.

103. Illustrative of income from activities, the expense of which is intermingled with the expense of rendering the

services for which are charged the rates, the reasonableness of which is determined by this order, is that derived from loading and unloading livestock. No attempt is made in this order to determine the reasonableness of the charges made by respondent to the railroads for this service; but, inasmuch as the facilities and services used in connection with the loading and unloading of livestock are used in rendering other services in the stockyard, such facilities are included as a part of the used and useful property, and the income and expenses incident to loading and unloading are considered in arriving at respondent's net stockyard operating income.

104. The following table shows in detail the matters of income above described:

Items of Income	Income Per Books	Deductions	Income for Rate Purposes
Yardage Received—Cattle	$ 172,013.42		$ 172,013.42
" " —Calf	22,747.12		22,747.12
" " —Hogs	208,300.38		208,300.38
" " —Sheep	116,564.68		116,564.68
" " —Horses & Mules	51.65		51.65
Gross Profit from Hay Sales	71,231.28		71,231.28
" " " Corn Sales	92,409.00		92,409.00
" " " Oat Sales	1,200.91		1,200.91
" " " Bedding Sales	9,236.51		9,236.51
" " " Milled Feed Sales	2,242.64		2,242.64
Loading and Unloading	52,011.00		52,011.00
Hog Yard Pen Bedding Sales	3,254.20		3,254.20
Tractor Rentals	24.39		24.39
Weighing	3,723.60		3,723.60
Stock Car Service	212.00		212.00
Manure Sales	155.87		155.87
Cleaning and Disinfecting Income	298.20		298.20
Income from Leases	4,658.04	$ 4,322.04	336.00
Rent of Tract Right-of-Way	26,499.96	26,499.96	
Partition and Weather Protection Income	547.90		547.90
Water and Power Service Income	1,279.04		1,279.04
Miscellaneous Income	354.13		354.13
Shoes (sold employees)	31.14		31.14
Truck Cleaning Income	221.75		221.75
Immunization Plant Income	4,238.40		4,238.40
Dipping Income	171.71		171.71
Sheep Shed Rentals (Miller Lease)	2,400.00	2,400.00	
Exchange Bldg. Office Rents	41,741.36		41,741.36
" " Garage Rents	3,166.97		3,166.97
" " Misc. Income	143.34		143.34
Ground Rents—Outside Real Estate	2,678.74	2,678.74	
House Rents—Outside Real Estate	173.60	173.60	
Outside Real Estate Rentals—Stock Yard Industries	6,830.00	5,630.00	1,200.00
Outside Real Estate Rentals—Industries	1,060.00	1,060.00	
Outside Real Estate Sale Pavilion Income	49.00	49.00	
Outside Real Estate Miscellaneous	585.39	585.39	
Interest Received	10,000.12	10,000.12	
Total	$ 862,507.44	$ 53,398.85	$ 809,108.59

Expenses.

Repairs, Maintenance, and Reserve for Depreciation.

105. Among respondent's necessary expenses, and, because of their importance, the first to be considered, are the requirements for maintaining the structures and equipment in good repair, replacing them as they come to the end of their service lives, and insuring respondent against the loss of their value due to the factors, such as obsolescence, inadequacy, or changed economic conditions, which may render them useless before wear and tear, rust, rot, and decay have destroyed them.

106. Efforts have been made to differentiate expenditures for repairs and maintenance from those for replacements and, thereby, to make separate allowances for these supposedly separate expenses, but it has not been found possible so to do, except upon a purely arbitrary basis. The most reasonable basis suggested for such an allocation is that any repair which has a service life of more than a year is a replacement, while any replacement having such a life of less than a year is a repair. The purpose of this is to avoid duplication but the difficulty in its application is the impossibility of segregation. A nail driven into a pen fence may very well have a life of several years, whereas a structure built at much greater cost may not last a year. Respondent's structures and equipment, excepting a few buildings, are of a nature peculiarly susceptible to being kept in what may be termed a constant per cent condition of their reproduction new value by the ordinary processes of repair and maintenance. A worn hinge on a gate is replaced by a new one. A new bolt or post is put into a pen fence. Some bricks are renewed at a particular point in the paving. A new plank or support is incorporated in a runway or viaduct. These operations go on from day to day as a part of the ordinary repairs and maintenance, and, thereby, the major portion, in value, of respondent's used and useful structures and equipment are kept in a condition which is fairly constant. As evidence of this, respondent's structures and equipment were appraised by this Department in 1927 and their condition found to be 76.3% of new. An appraisal by the same engineer in 1929 showed the condition to be 76% of new. An appraisal made by respondent in 1922 revealed a condition of 87% and another in 1929, but by a different engineer, showed 85%.

107. During the six-year period, beginning with the year 1923 and ending with 1928, respondent expended a total of $248,999 for repairs and maintenance, of all property whether used and useful or not, or an average of slightly less than $42,000 per year. During the same period replacements of and additions to the used and useful structures and equipment amounted to $102,455, while used and useful property valued at $33,714.72 was retired, which shows that during that six-year period less than $23,000 annually was required for retirements, replacements, and additions. In other words, respondent's annual requirements for repairs, maintenance, retirements, replacements, and additions, combined, during the six-year period immediately preceding the hearing did not average in excess of $65,000. The record fails to show the portion of this amount which was for additions and the extent to which duplication exists between replacements and retirements included in the above figures.

108. The appraisal engineer employed by the Government estimated the respective service lives of the various items of respondent's depreciable property at periods ranging from five years for the cornwasher, having a value of $429, to 50 years for the Exchange Building and its annex, the Transit House Hotel, brick and concrete garages, hay barns, horse barns, company stables, and some other similar structures, and 70 years for the sewer and water lines, making a composite estimated life of 25.7 years. On the basis of these figures, an accountant employed by the Government calculated an annual straight line allowance for depreciation of $117,229 on depreciable property, including general overheads, totaling in value $3,010,835, which is $160,100 more than the value of respondent's depreciable property hereinbefore found to be used and useful. He also ascertained an annual allowance for depreciation based on depreciable property assumed by him for that purpose to be used and useful amounting to $2,494,796, which is $355,939 less than the depreciable property hereinbefore found to be used and useful. He made this computation by the so-called 6% compound interest sinking fund method and arrived at an annual figure of approximately $51,000 to which he added an arbitrary $12,000 to take care of possible lapses in the investment of the sinking fund, and recommended an annual allowance for depreciation amounting to $63,000. He was of opinion

that that amount set aside and compounded annually would be sufficient, after taking care of any necessary lapses in investment, to produce the reproduction new value of each item of depreciable property at the end of its service life.

109. Respondent contends that, based on the Government engineer's estimated composite service life of 25.7 years, it is entitled to an annual allowance for depreciation reserve of $126,980. In other words, respondent's contention is that an annual allowance computed upon the so-called compound interest sinking fund method is inadequate and that the only adequate allowance is one arrived at by the so-called straight line method.

110. It is not necessary to decide whether the sinking fund or the straight line is the proper method of computation, for there is a more certain and definite guide in respondent's actual experience over the past six years, as outlined above. It is noted that the items of respondent's depreciable property which have the short estimated service life are those which are more completely kept up by what are usually classed as ordinary repairs and maintenance and which to the least extent are affected by the elements of obsolescence and inadequacy, while the structures in regard to which there may be relatively a greater need of what are usually called replacements and wherein the elements of obsolescence and inadequacy are more active are the items whose estimated service life is practically twice as great as the estimated composite for the entire depreciable property. If there be allowed $102,000 to cover repairs, maintenance, replacements, and a reserve for depreciation, there will result after the $65,000 hereinbefore indicated for repairs, maintenance, and replacements $37,000 to cover only the depreciation which results from inadequacy, obsolescence, and changed economic conditions, none of which factors are very active in respect to respondent's property, other than the Transit House Hotel. It appears that $102,000 per annum will provide sufficient funds to keep respondent's depreciable property constantly in good condition and to replace it when it comes to the end of its service life. It is found that there should be included in the computation of annual expense for rate-making purposes an allowance of $102,000 to cover the items of repairs, maintenance, replacements, and a reserve for depreciation.

Other Expenses.

111. For the year 1928 respondent set up on its books expenses totaling $609,672.58. It is found that the expenses reasonably incurred by respondent in that year in the rendition of the services for which are charged the rates, the reasonableness of which is determined by this order, amount to $441,143; and that those not so reasonably incurred amount to $168,529.58; all of which appears in detail from the following table:

Items of Expense	Expense Per Books	Expenses Found Not to be Reasonable for Rate Purposes	Expenses Found to be Reasonable
Repairs, Maintenance, and Reserve for Depreciation:			
Repairs—Yard Structures	$ 31,653.23		
" —Exchange Bldg.	3,978.84		
" —Water Line	3,017.67		
" —Pavement	2,559.49		
" —Sewer	818.01		
" —Equipment	420.37		
" —Hay Barns	50.72		
" —Dipping	4.76		
Depreciation—Yard Structures	86,814.38		
Depreciation—Exchange Bldg.	16,194.38		
Depreciation—Dipping	95.52	$ 145,607.37	$ 43,607.37	$ 102.000.00
Office and Management Labor		21,535.18		21,535.18
Yard Labor		140,280.57		140,280.57
Yard Cleaning and Disinfecting		25,091.08		25,091.08
Current Yard Expense		3,292.95		3,292.95
Casualty Insurance		5,861.76	1,526.10	4,335.66
Store Expense		1,459.52		1,459.52
Light, Heat, and Water Expense		13,483.85		13,483.85
Company Barn Expense		4,766.58		4,766.58
Grain Elevator Expense		2,948.15		2,948.15
Estray Account		503.73		503.73
Officers Travel and Entertaining Exp.		1,023.90		1,023.90
Stationery and Office Supplies		2,245.37		2,245.37
Office Expense		142.65		142.65
General Postage Expense		216.61		216.61
Telephone and Telegraph Expense		155.53		155.53
Office Rent Paid		1,141.08		1,141.08
Tractor and Trailer		2,462.61		2,462.61
Feed Truck Expense		112.50		112.50
Hog Yards Pen Bedding Expense		210.41		210.41
Traffic Dept. Pay Roll		4,267.34		4,267.34
" " Casualty Insurance		2.25	2.25	
" " Solicitors Salaries		8,473.15		8,473.15
" " Solicitors Expenses		8,698.88		8,698.88
" " Advertising Expenses		4,233.41		4,233.41
" " Postage Expenses		140.72		140.72
" " Printing and Stationery		220.34		220.34
" " Tel. and Tel. Expenses		1,477.40		1,477.40
" " Miscellaneous		674.12		674.12

Items of Expense—Continued			
Outside Real Estate—Casualty Ins....	41.70	41.70	
" " " —Depreciation....	18,538.40	18,538.40	
" " " —Reps. and Maintenance.....	3,062.31	3,062.31	
Outside Real Estate—Misc. Expense...$	2,124.18	$ 2,124.18	$
" " " —Sale Pavilion....			
Expense.....	76.72	76.72	
Outside Real Estate Insurance.....	2,464.39	1,450.87	1,013.52
Repairs—Sheep Feeding Sheds, O.R.E.	516.67	516.67	
Bad Debts.....	94.23		94.23
Depreciation—Sheep Feeding Sheds, O.R.E.....	1,344.96	1,344.96	
Donations.....	1,485.72	895.00	590.72
Stock Show Expense.....	2,912.25		2,912.25
Engineering Expense.....	967.15		967.15
Fiscal Agent—Registrars and Trustee Expenses.....	265.62		265.62
Legal and Collection Expense.....	1,650.00		1,650.00
Miscellaneous Administrative Expense.	3,033.99	1,181.86	1,852.13
Fire and Other Insurance.....	9,418.67		9,418.67
Fidelity Insurance.....	167.09		167.09
Audit Fees.....	325.00		325.00
Directors Expenses.....	10.00		10.00
Bank Exchange.....	28.10		28.10
Taxes (Other than Federal).....	37,064.44	13,548.46	23,515.98
Insurance—Dipping Boiler.....	21.24		21.24
Labor—Dipping Expense.....	53.35		53.35
Supplies—Dipping Expense.....	87.13		87.13
Exchange Bldg.—Janitor and Elevator Service.....	8,604.94		8,604.94
Exchange Bldg.—Labor.....	2,310.14		2,310.14
" " —Electricity.....	367.81		367.81
" " —Water.....	344.05		344.05
" " —Power.....	535.34		535.34
" " —Misc. Supplies and Expenses.....	2,225.50		2,225.50
Exchange Bldg.—Casualty Insurance...	334.29	334.29	
" " —Insurance.....	1,339.66		1,339.66
" " —Heat.....	3,922.65		3,922.65
Bond Interest.....	56,250.00	56,250.00	
Immunization Plant Expense.....	1,772.41		1,772.41
Truck Cleaning Expense.....	239.11		239.11
Partition and Weather Protection.....	405.14		405.14
Manure Sales Expense.....	97.45		97.45
Federal Income Tax.....	44,441.77	17,522.09	26,919.68
	$ 609,672.58	$ 162,023.23	$ 447,649.35

112. The majority in amount of the expenses found not reasonably to have been incurred, as above stated, were incurred in connection with property which hereinbefore has been found to be not used and not useful in the rendition of the services for which are charged the rates the reasonableness of which is determined by this order. The remainder represents expenses which, while incurred in connection with the used and useful property, were not reasonably so incurred.

113. Certain donations and miscellaneous administrative expenses are considered as not reasonably incurred in the rendition of the services aforesaid because they are made from the standpoint of the citizenship of respondent in the community in which it resides and does business and are of a character commonly made by the citizens of each community. Therefore, if they be passed back to respondent's patrons in the form of rates it will result that respondent's rate assessing power will have enabled it to compel its patrons to contribute to the St. Joseph community in addition to such contributions as voluntarily they may have made in their own communities. Where donations or contributions made by respondent have appeared to be of such character as might reasonably be expected to result in some peculiar benefit to its patrons or in the maintenance of the morale of its employees, they have been included among the reasonable expenses.

114. The allowance of $4,335.66 for casualty insurance is on the basis of the average net premiums paid by respondent annually during the period of five years from 1924 to 1928, both inclusive. This more accurately indicates the expense for this item over a period of several future years than does respondent's experience for the single year, 1928.

115. Taxes other than Federal have been ascertained in accordance with the finding heretofore made as to respondent's used and useful property.

116. Bond interest is not included among the reasonable expenses for the reason that it is a capital charge and is specifically provided for in the ascertainment of the fair rate of return.

117. Federal income taxes have been computed on the basis of the net operating income resulting from the application of the fair rate of return to the fair value of respondent's used and useful property hereinbefore found, in accordance with the existing rate prescribed by the income tax laws.

RESPONDENT'S EXISTING RATES AND CHARGES ARE UNREASONABLE AND UNJUSTLY DISCRIMINATORY.

118. Respondent's existing rates and charges are found to be unreasonable and unjustly discriminatory because (1) they yield a net return which exceeds the reasonable

cost of rendering the service, including the fair return herein found upon the fair value of respondent's used and useful property and (2) because they are imposed upon a portion of respondent's patrons in amounts sufficient to cover not only the cost of rendition of the service to those patrons but also the cost of the rendition of services to other patrons for which no charges are made.

119. Hereinbefore the fair value of respondent's used and useful property has been found to be $3,382,148; the fair rate of return thereon to be 7½%, yielding a return of $253,661; respondent's reasonable expenses for rate making purposes to be $447,649; and its total operating revenues in the fair test year to have been $809,108. Therefore, its existing rates yield a net operating income of $361,459, which is $107,798 in excess of the reasonable net operating income of $253,661.

VOLUME OF BUSINESS REASONABLY TO BE ANTICIPATED IN THE NEAR FUTURE.

120. Respondent draws its receipts of livestock from a trade territory in which the production of livestock does not appear materially to be changing. Its business is more competitive and the territory within which it has a practical monopoly is more restricted than some of the seven other larger stockyards of the country, nevertheless its total annual receipts of livestock during the past twenty-five years have remained practically stationary and the record indicates that, except for cyclical fluctuations, this status will continue in the near future. It is found that in respect to the receipts of livestock, the income resultant therefrom and the expenses incurred in the handling thereof, respondent's experience during the year 1928 was fairly representative of the immediate past and what reasonably is to be expected in the near future. Therefore, such experience is found to constitute a fair basis for the computation of income and expenses in the determination of the reasonableness of respondent's rates.

RATE STRUCTURE.

121. Hereinbefore it has been shown that the structure of respondent's existing schedule of rates and charges is such that, with the single exception of livestock resold in the commission division, all yardage charges are assessed

against and collected from those who cause the livestock to come to the stockyard; that those who purchase livestock within the stockyard fall into two general classes, namely, (1) those who purchase to remove it from the stockyard and (2) those who purchase to resell or otherwise trade in it within the stockyard. To each of these classes respondent renders a warehousing service, but, from the record in this proceeding, such service rendered to the first class cannot be said to consist of more than the collection together of the purchased livestock at a given point for the purpose of convenient delivery to the purchaser within a reasonable time after the purchase. On the other hand, the class of purchasers second above described have set up their place of business within the warehouse and market place established and maintained by respondent and this they have done without charge except, in so far as respondent may benefit from the spread on the feed which they buy. It may be that respondent has the right to render free service to one class of its patrons if by so doing it does not become necessary for it to maintain higher charges upon the service rendered to others, but for respondent to maintain a large section of a valuable property and to incur numerous expenses in the rendition of a free service to one class of its patrons and then to remunerate itself through a charge on another class which is greater than necessary to cover the cost of rendition of the service to the latter class, is unjustly discriminatory as well as unreasonable. It is found, therefore, that all who receive the benefit of carrying on their business within respondent's warehouse and market place through the purchase and resale of livestock therein should pay for the services so received substantially one-half of the rates and charges imposed upon those who cause to be brought to the warehouse and market place livestock for sale. For these, and other reasons which suggest themselves from the record herein, the rates hereinafter found to constitute the maximum reasonable rates to be charged by respondent are computed and ascertained upon the basis that respondent either will impose upon all its patrons selling livestock in its stockyard the rates hereinafter prescribed or will content itself to bear the losses occasioned by concessions to any class of its patrons. In other words, the reasonable maximum rates hereinafter found are computed on the assumption that upon all live-

stock sold a second or successive time or reweighed in the stockyard for purposes of, or in connection with a resale, there will be imposed a service and/or weighing charge substantially one-half of the yardage charge upon the same species and class of livestock when received by rail.

122. The reductions necessary to render respondent's rates and charges reasonable should be applied mostly to yardage charges rather than the spreads on feeds for the reason, hereinbefore explained in detail, that the latter are the only means whereby the difference in the amount of warehousing service per head of livestock rendered by respondent to its respective patrons affects the payments which such patrons make to respondent for such services.

Reasonable Rates.

123. On the basis of all the foregoing and the entire record in this proceeding, it is found and concluded that the following constitute and are the maximum reasonable rates and charges for the following services rendered by respondent, namely:

	Yardage				
	Cattle	Calves	Hogs	Sheep and Goats	Horses and Mules
Received by rail	28¢	18¢	10¢	07¢	35¢
Resold or reweighed for purpose of sale	14¢	09¢	05¢	03½¢	17½¢
Received by vehicle or on foot	33¢	21¢	12¢	09¢	35¢
Per car maximum		$15	$11		

Feed and Bedding.

Hay	Current market price, f. o. b. stock yard, plus	60¢ per cwt.
Corn	" " " " "	50¢ per bushel
Oats	" " " " "	25¢ per bushel
Mill feed	" " " " "	80¢ per cwt.
Bedding	" " " " "	40¢ per bale

The charge made for the above by respondent shall be divisible by 5 and respondent shall amend said charges when the margin between the cost and sale price of feed and bedding varies $.05 from the margin as specified above.

Dipping or Spraying.

Cattle	35¢ per head, minimum	$35.00
Calves	15¢ " " "	35.00
Hogs	5¢ " "	
Sheep or goats	5¢ " " "	8.00

Hog Immunizing Plant.

Use of services for vaccinating hogs ..... 10¢ per head

Cattle Testing Barn.

Cattle tested for tuberculosis and other diseases:

Use of specially equipped barns, including feed, bedding, and water ..... $1.00 per head

Cleaning and Disinfecting.

Single pens	$2.50
Double pens	4.00
Chutes	2.50
Alleys	0.37 per 100 square feet
Wagons and small trucks	.75 each
Trucks of 2 tons and over	1.00 each

Bedded and Shelter Pens.

Bedded pens for hogs, $1.00 per car per night.
Bedded pens for hogs, truck division, 15¢ per pen per night.
Shelter pens for cattle 10¢ per head, calves 05¢ per head each 24 hours, $2.00 minimum each pen.

124. Had these rates been in effect throughout the year 1928, they would have produced a net operating income of $256,068. This is equivalent to 7½% of $3,414,247, which is approximately $32,099 more than the fair value of respondent's property hereinbefore found. This is an additional allowance to afford a margin to cover any errors or omissions in the determination of the fair value. The tolerance in the spread on feed and bedding will provide an additional margin which cannot be calculated in advance of collection.

ORDER.

IT IS, THEREFORE, ORDERED that the respondent, on and after forty-five days from the date of this order, cease and desist from demanding or collecting for yardage, feed, or bedding, the rate or rates shown therefor in the schedule of rates and charges filed with the Secretary of Agriculture on the 30th day of September, 1929, and designated and known as St. Joseph Stock Yards Company Tariff No. 5.

IT IS FURTHER ORDERED that the respondent on and after forty-five days from the date of this order shall not publish, demand, or collect any rate or charge for the furnishing of any stockyard service in excess of the rates and charges hereinbefore found and determined to be just and reasonable for the furnishing of such services.

IT IS FURTHER ORDERED that at least 10 days prior to the forty-fifth day from the date of this order the respondent publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule effective on the forty-fifth day from the date of this order showing all rates and charges for the stockyards services furnished by re-

spondent at the St. Joseph Stockyards, St. Joseph, Missouri, and all rules and regulations changing, affecting, or determining such rates or charges, and that no rate or charge so shown for any such stockyards service be in excess of the rate or charge hereinbefore determined to be just and reasonable for such services.

IT IS FURTHER ORDERED that the petition for a reopening of this proceeding and a rehearing herein, filed by respondent on February 11, 1931, having been considered, be and the same hereby is denied.

IT IS FURTHER ORDERED that a copy of this order be transmitted by registered mail to respondent.

IN WITNESS WHEREOF the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 20th day of July, 1931.

R. W. DUNLAP,
Acting Secretary of Agriculture.

EXTRACT FROM TESTIMONY OF JOHN J. BACHMANN, IN CHARGE OF AUDITS AND ACCOUNTS, PACKERS AND STOCKYARDS DIVISION, DEPARTMENT OF AGRICULTURE. (RECORD, pp. 573-575.)

Recross Examination.

Income for Rate-Making Purposes.

The following is the table I have prepared for the year 1932 comparable to the items listed on pages 2, 3 and 4 of Government Exhibit No. 124.

ST. JOSEPH STOCK YARDS CO.
INCOME 1932

	Total	Additions	Include	Exclude
Yardage Received	$415,699.86		$415,699.86	
Gross Hay Sales	63,260.86		63,260.86	
Gross Corn Sales	84,241.54		84,241.54	
Gross Oat Sales	759.74		759.74	
Gross Bedding Sales	7,281.02		7,281.02	
Gross Milled Feed Sales	8,579.54		8,579.54	
Hog Pen Bedding	2,323.95		2,323.95	
Milling Feed Revenue	5,816.04		5,816.04	
Loading & Unloading	19,592.25		19,592.25	
Exch. Bldg.—Office Rents	38,714.50		38,714.50	
Exch. Bldg.—Garage Rents	2,705.73		2,705.73	
Exch. Bldg.—Misc. Revenue	93.53		93.53	
Weighing Cars	3,141.73		3,141.73	
Stock Car Service	52.00		52.00	
Cleaning, Sanding & Disinfecting	82.65		82.65	
Manure Sales	40.01		40.01	
Car Partitions, etc.	111.40		111.40	
Immunization Plant	1,649.50		1,649.50	
Truck Washing	733.25		733.25	
Yard Truck Revenue	—		—	
Tractor and Trailer	5.00		5.00	
Company Barn	—		—	
Estrays	161.89		161.89	
Miscellaneous Income	133.68		133.68	
Yard Leases & Rentals	1,820.18		1,720.22	99.96
Shoes (Employees) Sold	—		—	
Feeding Facility Yardage	3,320.75			3,320.75
Rental Feeding Facilities	690.00			690.00
Rent—Tracks & Right-of-Way	—		—	
Rent—O. S. R. E. Industries	270.00			270.00
Rent—O. S. S. Y. Industries	2,970.00		1,290.00	1,680.00
Rent—Houses—Outside Acct.	47.10			47.10
Rent—Ground—Outside Acct.	472.50			472.50
Dipping Income	—		—	—
Water, Elec. & Heat Sales	1,847.33		1,847.33	
Interest	5,101.59			5,101.59
Bad Debts	1.40		1.40	
Sales Pavilion Income	—		—	
Misc. O. R. E. Inc.	79.68		79.68	(Water Sales)
Dividends—Casualty Ins.	—	5,500.00	5,500.00	—
Yardage, Traders Volume	—		—	
Farm Operations	115.86			115.86
	$671,916.06	5,500.00	665,618.30	11,797.76

ST. JOSEPH STOCK YARDS CO.

EXPENSES

YEAR 1932

	Total	Additions	Include	Exclude
Office & Management Payroll	$ 23,528.68		$ 23,528.68	
Misel. Adm. Expense	6,071.50		71.50	6,000.00
Officers Travel & Entertainment	681.27		681.27	
Legal & Collection	1,500.00		1,500.00	
Pensions	5,268.74		5,268.74	
Donations & Subscriptions	2,423.46		302.88	2,120.58
Taxes	43,475.84		37,547.60	5,928.24
Depreciation	122,509.92		50,000.00	72,509.92
Insurance	13,701.59		12,324.58	1,377.01
Valuation Hearing	3,082.54			3,082.54
Bond Interest	46,014.02			46,014.02
Bond Discount	4,855.83			4,855.83
Office Rent	1,782.00		1,782.00	
Office Supplies	682.67		682.67	
Office Expense	120.24		120.24	
Office Postage	267.07		267.07	
Telephone & Telegraph	903.31		903.31	
Store House Expense	1,117.60		1,117.60	
Engineering	3.41		3.41	
Fiscal Agents, Registrars, etc.	308.12		308.12	
Yard Pay Rolls	119,956.40		119,956.40	
Yard Cleaning & Disinfecting	19,241.37		19,241.37	
Yard Current	3,749.71		3,749.71	
Yard Casualty Insurance	3,528.75		3,528.75	
Estrays	375.07		375.07	
Water, Electricity & Heat	13,164.98		13,164.98	
Company Barn	1,922.28		1,922.28	
Yard Truck	120.47		120.47	
Cost of Hay Sold	26,040.85		26,040.85	
Cost of Corn Sold	52,069.29		52,069.29	
Cost of Oats Sold	416.10		416.10	
Cost of Bedding Sold	2,486.07		2,486.07	
Cost of Milled Feed Sold	4,421.29		4,421.29	
Cost of Hog Pen Bedding	177.96		177.96	
Milling Feed Expense	1,749.70		1,749.70	
Grain Elevator	1,005.70		1,005.70	
Weighing	3,479.28		3,479.28	
Dipping	85.56		85.56	
Car Partitions, etc.	19.72		19.72	
Immunization Plant	453.09		453.09	
Repairs—Yard Structures	12,153.72		12,153.72	
Repairs—Water Lines	2,602.90		2,602.90	
Repairs—Sewers	561.76		561.76	
Repairs—Paving	1,074.16		1,074.16	
Repairs—Hay Barns	247.54		247.54	
Repairs—Equipment	319.88		319.88	
	549,721.41		407,833.27	141,888.14

ST. JOSEPH STOCK YARDS CO.

EXPENSES

YEAR 1932 (Continued)

	Total	Additions	Include	Exclude
Brt. Forward	549,721.41		407,833.27	141,888.14
Repairs—Outside Property	796.72		412.68	384.04
Repairs—Exchange Bldg.	1,755.35		1,755.35	
Repairs—Feeding Facilities	281.76			281.76
Payroll—Traffic Dept.	6,804.00		6,804.00	
Solicitors Salaries—Traffic Dept.	14,921.00		14,921.00	
Casualty Insurance—Traffic Dept.	2.28		2.28	
Postage—Traffic Dept.	326.55		326.55	
Printing & Stationery—Traffic Dept.	371.80		371.80	
Telephone & Telegraph—Traffic Dept.	1,681.50		1,681.50	
Misc.—Traffic Dept.	1,168.24		1,168.24	
Solicitor's Expense—Traffic Dept.	14,312.25		14,312.25	
Advertising	3,870.11		3,870.11	
Stock Show	2,764.99		2,764.99	
Exchange Bldg.—Labor	7,029.05		7,029.05	
Exchange Bldg.—Casualty Ins.	265.79		265.79	
Exchange Bldg.—Elec., Water Heat	5,055.68		5,055.68	
Exchange Bldg.—Supplies	1,635.39		1,635.39	
Truck Washing Expense	234.01		234.01	
Sale Pavilion Expense	3.50		3.50	
Misc. O. R. E. Expense	2,334.07			2,334.07
Casualty Ins. O. R. E.	36.96			36.96
Tractor & Trailer Expense	623.93		628.93	
Audit Expense	330.05		330.05	
Repairs—Furn. & Fixt.				
Bad Debts	320.52		320.52	
Cost of Shoes Sold (Employees)				
Bank Exchange				
Manure Sales Expense				
Bond Issue Expense				
Interest				
	616,646.91		471,721.94	144,924.97

There was an item of water sale and profit listed on page 2 of Government Exhibit No. 124 as a part of the item "water, electricity and heat, $2,686.99." This amount is analyzed on page 142 of Government Exhibit No. 121-A. It was sold to Stevens and Williams. This particular item was $514.55, and the profit margin was $326.20, both of which items are included on page 2 of Government Exhibit No. 124 in the amount $2,686.99. The water used by Stevens and Williams was in connection with feeding

operations they were performing. To the extent that there was any profit in that transaction that would be revenue in addition to the revenue charged under item 12-A of respondent's tariff. The figures for the year 1932 were handled in exactly the same way as the figures for 1931. There may be one or two small items not shown in 1931 which are in 1932, because there were no similar items in 1931. I followed the same rule. I don't recall that there were any items appearing in 1931 that did not appear in 1932, but I think the reverse is true. That is the last item of income for 1932, farm operations. I understand it was the net proceeds from farming operations. That is the only item that I recall in the 1932 statement which does not appear in the year 1931. On pages 2, 3 and 4 of Government Exhibit No. 124, occasionally opposite an item appear two small dashes, which indicate that in one or more of the six years which have been analyzed an item of income or expense designated by that particular name will be found, although the same item may not be found in each of the six years. I followed the same practice in the 1932 statement.

ALLEGATION CONCERNING GOING CONCERN VALUE DETERMINED BY SECRETARY IN FIRST DECISION OF JULY 20, 1931, CONTAINED IN APPELLANT'S PETITION TO ENJOIN SAID DECISION AND ORDER.

"(G) That in said unlawful and pretended valuation of petitioner's stockyards property, said Secretary made a finding that the going concern value of petitioner's property is $300,000; that no evidence with respect to the going concern value of petitioner's property was offered in said hearing on behalf of said Secretary; that the only evidence offered in said hearing with respect to the going concern value of petitioner's stockyards property was that offered on behalf of petitioner; that the undisputed evidence of record in said hearing establishes that petitioner's stockyards property has a going concern value of not less than $666,663; that said evidence on behalf of petitioner has been unlawfully disregarded by said Secretary in his said Findings, Conclusions and Order, thereby depriving petitioner of its property in the sum of $366,663; that the action of said Secretary in depriving peti-

tioner of its going concern value in the sum of $366,663 is unsupported by any evidence of record; is contrary to the only evidence of record; is contrary to the weight of the evidence; is arbitrary; is confiscatory; and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States."

Answer of United States and Secretary of Agriculture to Said Allegation in Appellant's Said Petition.

"(g) Answering Paragraph IX of said petition, and Sub-paragraph (G) thereof, defendants admit that there is included in the aforesaid fair value an item of $300,000 as and for the going concern value of petitioner's property and business; but deny that no evidence with respect to the going concern value of petitioner's property was offered on behalf of said Secretary at the hearing described in said petition; and allege that much evidence tending to show the going concern value of petitioner's property and business was introduced on behalf of said Secretary at said hearing. Defendants further deny that the only evidence offered at said hearing with respect to the going concern value of petitioner's property was that offered on behalf of petitioner; or that the undisputed evidence of record in said hearing establishes for petitioner's property a going concern value of $666,663, or any sum in excess of $300,000; or that evidence offered by or on behalf of petitioner was disregarded by said Secretary, either unlawfully or otherwise; or that the Order deprives petitioner of property in the sum of $366,663, or in any sum whatsoever. Further answering said Sub-paragraph (G) defendants say that other values found by the Secretary and included in said fair value of $3,382,148 include and comprise all the going concern value which inheres in or attaches to petitioner's property and business, wherefore said Secretary was not required to include in said fair value any further or separate allowance for going concern value, and further that said further and separate allowance of $300,000 is more than adequate. Except as herein otherwise admitted, defendants deny each and every allegation of said Sub-paragraph (G)."

EXTRACT FROM DECISION OF SECRETARY IN DOCKET NO. 301, DENVER UNION STOCK YARD COMPANY CASE.

UNITED STATES OF AMERICA
BEFORE THE
SECRETARY OF AGRICULTURE.

BUREAU OF ANIMAL INDUSTRY DOCKET NO. 301.

Secretary of Agriculture
vs.
Denver Union Stock Yard Company,
Respondent.
} Proceedings, Findings of Fact and Order.

* * * * * *

GOING CONCERN VALUE

87. Respondent contends that in addition to any and all other values which may be included in the ascertainment of fair value and the rate base it is entitled to have allowed and included an item of $807,000 as and for going concern value. Respondent's claim in this respect is based upon the testimony of the witness Howson, an engineer who made an elaborate mathematical computation in an effort to show the amount of this so-called value. The method recommended by him is an attempt to estimate the cost of reproducing a business which respondent now enjoys by assuming that some person or persons desirous of operating a stockyard at Denver, Colorado, found themselves in the peculiar position whereby they could purchase respondent's property and business as a going, operating concern, or could construct exactly similar property, and if they decide upon the latter course, the respondent would immediately cease to operate its business. The witness adopts the preliminary ten months period and the construction period used by the respondent's engineer and assumes that during the first two years of that period all the business theretofore enjoyed by respondent would be dissipated. He then sets out to determine what it would cost the new concern to attach to its new stockyard the amount of business, and its resultant income, which re-

spondent now enjoys. To do this he seeks to ascertain the period of time which would elapse after the new yard began operations and before its receipts of livestock and resultant income would be equal to those now possessed by respondent. He also seeks to ascertain what percentage of respondent's present receipts of livestock would be recovered by the new yard during each year of the aforesaid period of recovery. He estimated the operating expenses for each year of the period of recovery as the result of an analysis of the various items of operating expense during the years 1928 and 1929. The expenses are then deducted from the income expected to be derived from the imagined receipts of livestock and thus the possible deficit is estimated for each year of the period of recovery of business.

88. For the purpose of determining a period of recovery of business the witness Howson interviewed three men engaged in the livestock commission business at the Denver market and two of respondent's officers. These men were asked to estimate the number of years which would be required to regain the business if the new yard had begun operations. They were also asked to estimate the probable rate of recovery during each year of the period estimated. The estimates ranged from seven to twelve years as the period required for the recovery of business. He did not accept these estimates as controlling, but based his calculations upon the assumption that the receipts would be recovered during the fifth year of operations. He aggregates the present worth of the supposed deficits into a total of approximately $807,000 and says that whether the new company built its own new yard at the cost of reproduction new shown in this record or purchased the existing yard with the attached business at the cost of reproduction new plus $807,000 as going concern value, the ultimate cost to the new company would be exactly the same. In arriving at these figures he accepts the respondent's valuation of the land and physical structures and assumes that the respondent is not now earning more than a fair return. Therefore, he draws the conclusion that $807,000 is the fair value of the element of going concern in respondent's business.

89. Rather than adopting as a basis for his calculations such deficits as may have occurred in the past, the witness projects his calculations into the future and undertakes to

construct certain hypothetical deficits based upon certain assumed conditions. The assumptions have no foundation in fact. It is not shown that the conditions assumed have ever come within the experience of the witness or those whom he interviewed. Obviously this method is capable of expansion to produce any desired amount of going concern value merely by increasing the imagined period of recovery or slowing up the rate of recovery. For these reasons and others, the method suggested by witness Howson for measuring going concern value is not herein adopted.

90. It is found that the going concern value of respondent's business and its property used and useful in the rendition of the services for which are charged rates, the reasonableness of which is hereinafter determined, is $295,000.00.

EXTRACT FROM DECISION OF SECRETARY IN DOCKET NO. 344, OMAHA STOCK YARDS CASE.

UNITED STATES OF AMERICA
BEFORE THE
SECRETARY OF AGRICULTURE.

BUREAU OF ANIMAL INDUSTRY DOCKET NO. 344.

Secretary of Agriculture
vs.
Union Stock Yards Company of Omaha, Ltd.,
Respondent.
} Proceedings, Findings of Fact and Order.

* * * * * *

Going Concern Value:

86. In addition to the value of the land and physical structures there is an element of value inherent in this property as an operating business which element is commonly referred to as going concern value. Respondent's witness Hyder placed in evidence a summary of respondent's contentions as to the total value of its property. Under the general item designated "intangibles" which has previously been discussed are included certain items which in so far as they have merit are entitled to consideration in connection with the allowance for going concern. Respondent also introduced evidence through the witness Howson for the purpose of showing specifically the amount which it contended should be allowed for going concern value. This witness made an elaborate mathematical computation in an effort to show the amount of such value. The method recommended by him is an attempt to estimate the cost of reproducing the business which respondent now enjoys by assuming that some person or persons desirous of operating a stockyard at Omaha, Nebraska, found themselves in a peculiar position whereby they could purchase respondent's property and business as a going, operating concern or could construct an exactly similar property and if they decided upon the latter course the respondent would immediately cease to operate its business. The witness adopts the period of construction used by respondent's en-

gineer and assumes that during the period of three years all of the business theretofore enjoyed by the respondent would be dissipated. He then sets out to determine what it would cost the new concern to attach to its new stockyard the amount of business and its resultant income which respondent now enjoys. To do this he seeks to ascertain the period of time which would elapse after the new stockyard began operations and before its receipts of livestock and resultant income would be equal to those now possessed by respondent. He also seeks to ascertain what percentage of respondent's present receipts of livestock would be recovered by the new yard during each year of the aforesaid period of recovery. He estimates the operating expenses for each year of the period of recovery as the result of an analysis of the various items of operating expense during the years 1926 to 1930, inclusive. The expenses are then deducted from the income expected to be derived from the imagined receipts of livestock and thus the possible deficit is estimated for each year of the period of recovery of business.

87. For the purpose of determining the period of recovery of this business the witness Howson interviewed three men engaged in the livestock commission business at the Omaha market and one of respondent's officers. These men were asked to estimate the number of years which would be required to regain the business if the new yard had begun operations. They were also asked to estimate the probable rate of recovery during each year of the period estimated. Using the weighted average of these estimates he determined that 83.6% of the business would be recovered at the end of the fifth year after the reopening of the yard and that complete recovery of the business would be accomplished approximately seven years after such reopening. The witness aggregates the present worth of the supposed deficits into an amount of $1,893,597 and says that whether the new company built its own new yard at the cost of reproduction new shown in the record or purchased the existing yard with the attached business at the cost of reproduction new plus $1,893,597 as going concern value, the ultimate cost to the new company would be exactly the same. In arriving at these figures the witness accepted respondent's valuation of the land and physical structures and assumes that the respondent is not now earning more than a fair return. He draws

the conclusion that $1,893,597 is the value of the element of going concern in respondent's business.

88. Rather than adopting as a basis for his calculations such deficits as may have occurred in the past, the witness projects his calculations into the future and undertakes to construct certain hypothetical deficits based upon certain assumed conditions. The assumptions have no foundation in fact. It is not shown that the conditions assumed have ever come within the experience of the witness or those whom he interviewed. Obviously this method is capable of expansion to produce any desired amount of going concern value merely by increasing the imagined period of recovery or slowing up the rate of recovery of the business. The effect of adopting such a method of determining going concern value would result in showing a higher going concern value for a concern whose officers were inefficient and whose policy was not aggressive and where the period of recovery of business would extend over many years than would be true in the case of a corporation having efficient officers and an aggressive policy which resulted in the recovery of the business in a comparatively short time. The method of ascertaining going concern value as outlined by this witness is not adopted.

89. Respondent's business has a history extending back for many years. Its business has been well managed; during the early period of its history it showed a steady growth and during the past 10 or 12 years it appears that the business has reached a stage of comparative stability. It may be presumed that the business will continue in the future substantially as it has during the past 10 or 12 year period. During its entire history the business has paid regular dividends to the stockholders of the respondent company. The company has now reached the stage where it has efficient officers and its employees have had years of experience. The operations of the company function smoothly. Based on the entire evidence in the record it appears that the property and business of the respondent have a substantial going concern value and it is found that $850,000 represents the element of going concern value of the respondent's property and business.

ABSTRACT FROM TESTIMONY OF GOVERNMENT ENGINEER, HERMANN C. HENRICI, RECORD 429-435.

Depreciation Reserve.

DEPRECIATION AND COMPOSITE LIFE TABLES.

The probable life of the structures of respondent is shown in Government Exhibit No. 114, the section of the exhibit consisting of 4 pages entitled "Depreciation and Composite Life" (T. 489). I have found separate life expectancies for various units of property and from those calculated a composite life for the property as a whole of 24.8 years. As a background for this portion of the exhibit I had the record of some twenty commissions and engineers in which the life of various buildings and structures was recorded. I had the observation of each particular building or structure in mind with a view to all the elements which would cause it to be depreciated to zero. Having in mind all the causes of depreciation, such as rot, rust, decay, wear and tear, obsolescence and inadequacy, I placed the life expectancy opposite each item of property (T. 490). In the first column lettered A the reproduction new value of the property is given. In the second column, B, is the life expectancy in terms of years. In the third column, C, is the rate of depreciation per year. It is 100 divided by the life expectancy in years. Column B is the result by applying the percentage in Column C against the Value in Column A which gives the amount of depreciation reserve estimated on a so-called straight-line basis. I had available various reports made by public utility commissions and engineers which gave the life period of buildings which had been erected and had come to the end of their lives. Those were all types of buildings, including office buildings, hotels, factories, residences, and apartment houses (T. 491). These did not include stockyard structures such as pens and fences. The most of the buildings included in these reports were either in downtown business districts, industrial areas, residential districts of cities, or in small towns and isolated communities. From my knowledge gained from the reports and my own experience and observation, wear and tear, rust, rot and decay are not large factors in bringing buildings of this country to the end of their lives. Obsolescence is the large factor. It is the result of American progress and the growth of Ameri-

can cities. Inadequacy plays a considerable part in the end of the lives of these buildings (T. 492). When there is an office building on a downtown lot and the growth of the city and the business of the city lead the owners of that building to believe they could rent much more space if they had more space to rent, it is usually neither practical nor possible to erect an annex to the buliding. The only thing is to tear down the old building and erect a larger one, or erect a larger one some place else. This same thing is true of obsolescence. The American taste and the advance in the arts combined are tending more to the luxuries of life in recent years. The demand is for buildings, whether they be hotels, apartment houses, office buildings, or residences, with what we call the modern improvements. All this tends to bring these buildings to the end of their lives (T. 493). From a purely structural standpoint most of these buildings were in usable condition when torn down. The reports I have studied include factory buildings or other industrial buildings. Some of the major factors which bring such buildings to the end of their useful lives are as follows. Originally buildings were built of frame structure. Cost of insurance and the safety of occupancy required that fireproof buildings be erected in place thereof, or a building was built to carry a certain load per square foot of floor area and the demands of the occupants were such that those loads be increased. In such case it is sometimes more economical to tear down the building, and put up a building of a stronger frame, a different type of building. That may come from a change in the use to which the building is being put (T. 494). Factories or other industrial buildings ofttimes come to the end of their lives through the insolvency of the owner and his ceasing to use them. At other times they come to the end of their lives because it is no longer economical to continue in that business at that place. I have observed what has happened in the jobbing district of the city of St. Joseph. I have observed that a number of buildings once used and occupied are now closed (T. 495). I do not know whether or not any of the buildings at the St. Joseph Stock Yards have become inadequate. If the Exchange Building became inadequate it would be practicable to erect an annex to take care of that inadequacy (T. 497). Insolvency is one of the elements that enters into the life of the property. For example, a Kansas City firm became insolvent after a good many

years of successful operation of a factory building. Parts of the building had to be remodeled for other tenants and other parts just simply had to be destroyed in order to save taxes (T. 498). Life tables simply take into consideration the time elapsing from the time the building was built until the building ceased to exist. In all cases the reason for its ceasing to exist is not known. It was torn down for some reason but that represents the life of that building. A percentage could not be applied to the life tables as being equivalent to the amount due to insolvency. The fact is that these life tables which have been used as a basis were obtained from buildings all over the United States and I could not say just how much was due to insolvency but I imagine not a great percentage (T. 499). I have not taken into consideration the question of the insolvency of stockyards companies because I knew of no stockyards that had become insolvent. I know of none that have been abandoned (T. 502). The competitive factors in respect to procuring tenants in the Exchange Building are not the same as exist in downtown areas (T. 503) There is no other such space for rent within the area of the St. Joseph Stock Yards other than provided by the stockyards itself. There are some buildings for rent which might be used as offices outside of the stockyards area. They are two or three blocks away in the business district of South St. Joseph, each of the stockyards. Intervening are store buildings and residences. It would not be practicable for persons conducting their business upon the stockyards to maintain offices in the buildings to which I have referred (T. 504). In reports to which I had access and to which I have referred there are included properties of railroads in the nature of pens and fences. They would be partly pens and fences for holding livestock. I do not know what type of livestock pens were included in connection with the railroads. They are of a general type of construction. These tables did not include any pens or fences in what are known as public markets. They did not include any property of any kind in a public stockyards (T. 505).

Government Exhibit No. 114.

The following is the depreciation and composite life table taken from Government Exhibit No. 114:

A—New Value. B—Life in Years. C—Annual Rate of Depreciation in per cent. D—Amount of Depreciation annually.

Pages	Structure	A	B	C	D
1	Exchange Building	330724	40	2.5	8268
53	Exchange Building Annex	15041	40	2.5	376
60	Hose House and Equipment	2409	30	3.3	79
63	Garage, Brick and Concrete	4885	35	2.9	142
66	Garage, Brick and frame	3323	30	3.3	110
68	Garage, frame	2215	20	5.0	111
70	Receiving Office	12776	40	2.5	319
83	Underground Water	1285	50	2.0	26
84	Outside Electrical	638	15	6.7	43
108	Cattle Commission Men's Pens and Alleys	232038	15	6.7	15547
163	Cattle Traders Pens & Alleys	89206	15	6.7	5977
191	Cattle Packers Pens & Alleys	90764	15	6.7	6081
216	Cattle Drive-In Section	7864	15	6.7	527
219	Cattle Scale #3	10369	30	3.3	342
225	Cattle Scale #4	10454	30	3.3	345
226	Cattle Scale #5	10454	30	3.3	345
226	Telephone Booths	40	15	6.7	3
227	Cattle Scale #6	9740	30	3.3	322
231	Cattle Drive-In Scale	3271	30	3.3	108
234	R. R. Unloading Docks	49445	40	2.5	1236
239	Branding and Dehorning Chutes	2087	15	6.7	140
243	Tuberculosis Testing Barn	8247	20	5.0	412
245	Cattle Dip	2097	30	3.3	69
247	Hay Barns Nos. 1 to 8	82825	40	2.5	2071
251	Hay Scale and Office	2397	40	2.5	60
255	Packers Cattle Drive	3341	15	6.7	224
256	Yard Lighting	576	15	6.7	39
257	Armour Holding Pens	4540	15	6.7	304
258	Sewer and Water Outside Area	1519	50	2.0	30
259	Sheep—Commission Section	65760	20	5.0	3288
267	Sheep—Packers Section	29442	20	5.0	1472
269	Sheep—R. R. Unloading Docks	12576	40	2.5	314
272	Sheep Dip	7109	30	3.3	235
278	Sheep Scale No. 1	9768	40	2.5	244
285	Outlet Sewers (Sheep Division)	1076	50	2.0	22
305	Hog Commission Section	246102	20	5.0	12305
348	Hog Packers & Order Buyers Section	83255	20	5.0	4163
362	Hog Drive-In Section	31450	20	5.0	1573
376	Hog Scale No. 10	8398	40	2.5	210
384	Hog Scale No. 11	6266	40	2.5	157
386	Truck Hog Scale	1917	40	2.5	48
390	Cripple Scale	247	25	4.0	10
391	Hog R. R. Unloading Docks	45742	40	2.5	1144
402	Packers Drive	1341	15	6.7	90
403	Water—Outside Area	273	50	2.0	5
404A	Packers Covered Drive	6062	20	5.0	303
406	Immunization Plant	15731	30	3.3	519
425	Corn Elevator	14457	50	2.0	289
438	Timber Water Tanks	11368	20	5.0	568
443	R. R. Unloading Docks	18426	40	2.5	461
457	Southern Cattle Division Pens and Alleys	13064	15	6.7	875
466	Cattle Scale #2	5460	30	3.3	180
470	R. R. Unloading Dock	21880	40	2.5	547

Pages	Structure	A	B	C	D
474	Packers Drive	1292	15	6.7	87
475	Company Stable	12989	40	2.5	325
482	Shed E. of Company Stable	210	20	5.0	11
483	Miscellaneous Fence, etc.	528	15	6.7	35
487	Horse & Mule Fences and Gates	1225	15	6.7	82
490	Horse Barn No. 1	17363	40	2.5	434
494	Shed between Horse Barn No. 1 and No. 2	830	20	5.0	42
496	Shed near Horse Barn No. 1	359	20	5.0	18
497	Horse Barns Nos. 2 & 3	26116	40	2.5	653
502	Shed between Horse Barn No. 3 & 4	822	20	5.0	41
504	Horse Barns Nos. 4 & 5	32959	40	2.5	824
509	Shed No. 6	2060	20	5.0	103
512	Horse Barn No. 20	15743	40	2.5	394
520	Horse Barn No. 21	31005	40	2.5	775
528	Horse Barn No. 22	3712	40	2.5	93
529	Shed No. 23	3967	20	5.0	198
533	Blacksmith Shop	1025	20	5.0	51
535	Sewer and Water—Horse Div.	5109	50	2.0	102
536	Reinforced Concrete Reservoir	16175	40	2.5	404
539	Plumbing & Paint Shop	1388	30	3.3	46
542	General Yard Lighting	2607	15	6.7	175
544	Foot Subway	11790	50	2.0	236
546A	Cement Storage House	607	20	5.0	30
549	Outside Paving and Sewers	145436	35	2.9	4218
551	Brick and Concrete Garage	3550	40	2.5	89
554	Transit House	132726	40	2.5	3318
597	Yard Lighting E. of R. R.	260	15	6.7	17
600	Valve Connection to Swift & Co.	1342	25	4.0	54
601	Miller Sheds (Rockhold)	15190	20	5.0	760
610	Thomas McKee Shed	840	20	5.0	42
614	Dutton Sheds (Swift)	5535	20	5.0	277
627	Rountree Shed (Swift)	17011	20	5.0	851
636	Corrigan's Office	1080	40	2.5	27
638	Harness Shop	11932	40	2.5	298
651	Journal Building	17993	40	2.5	450
666	Leased Lots Southern Cattle Division	13024	15	6.7	873
671	Fire Protection Equipment	369	20	5.0	18
672	Swift Viaduct	1549	20	5.0	77
	"A" Totals	2209458	24.8 (av.)	4.037	89206
	Errors and Omissions 5%	110473			4460
	"B" Totals	2319931	24.8	4.037	93666
	Engineering and Architects 5%	115997			4683
	Legal Expenses 1%	23199			937
	General Salaries & Expenses 2%	46399			1873
	Liability Insurance 6.1% of Labor Only	51015			2059
	Fire Insurance 0.5%	11600			468
	Taxes During Construction	24126			974
	"C" Totals	2592267	24.8	4.037	104680
	Interest During Construction 7% for 6 months	90729			3663
	"D" Totals	2682996	24.8	4.037	108323
	Additions and Betterments (Book Value)	128041			5169
	"E" Totals				

RESTATEMENT OF MAJOR ITEMS IN GOVERNMENT EXHIBIT 114, GROUPING PROPERTY OF SAME ESTIMATED LIFE.

	Value New	Life in Years.
Underground Water	$ 1,285	50
Sewer and Water Outside Area	1,519	50
Outlet Sewers (Sheep Division)	1,076	50
Water—Outside Area	273	50
Corn Elevator	14,457	50
Sewer and Water—Horse Division	5,109	50
Foot Subway	11,790	50
	$ 35,509	
Exchange Building	330,724	40
Exchange Building Annex	15,041	40
Receiving Office	12,776	40
R. R. Unloading Docks	49,445	40
Hay Barns Nos. 1 to 8	82,825	40
Hay Scale and Office	2,397	40
Sheep—R. R. Unloading Docks	12,576	40
Sheep Scale No. 1	9,768	40
Hog Scale No. 10	8,398	40
Hog Scale No. 11	6,266	40
Truck Hog Scale	1,947	40
Hog R. R. Unloading Docks	45,742	40
R. R. Unloading Docks	18,426	40
R. R. Unloading Dock	21,880	40
Company Stable	12,989	40
Horse Barn No. 1	17,363	40
Horse Barns Nos. 2 & 3	26,116	40
Horse Barns Nos. 4 & 5	32,959	40
Horse Barn No. 20	15,743	40
Horse Barn No. 21	31,005	40
Horse Barn No. 22	3,712	40
Reinforced Concrete Reservoir	16,175	40
Brick and Concrete Garage	3,550	40
Transit House	132,726	40
Corrigan's Office	1,080	40
Harness Shop	11,932	40
Journal Building	17,993	40
	$941,524	
Garage, Brick and Concrete	4,885	35
Outside Paving and Sewers	145,436	35
	$150,321	
Hose House and Equipment	$ 2,409	30
Garage, Brick and Frame	3,323	30
Cattle Scale #3	10,389	30
Cattle Scale #4	10,454	30
Cattle Scale #5	10,454	30
Cattle Scale #6	9,740	30
Cattle Drive-In Scale	3,271	30
Cattle Dip	2,097	30
Sheep Dip	7,109	30
Immunization Plant	15,731	30
Cattle Scale #2	5,460	30
Plumbing & Paint Shop	1,388	30
	$ 81,805	

	Value New	Life in Years.
Cripple Scale	247	25
Valve Connection Swift & Company	1,342	25
	$ 1,589	
Garage, Frame	2,215	20
Tuberculosis Testing Barn	8,247	20
Sheep—Commission Section	65,760	20
Sheep—Packers Section	29,442	20
Hog Commission Section	246,102	20
Hog Packers & Order Buyers Section	83,255	20
Hog Drive-In Section	31,450	20
Packers Covered Drive	6,062	20
Timber Water Tanks	11,368	20
Shed E. of Company Stable	210	20
Shed between Horse Barn No. 1 and No. 2	830	20
Shed near Horse Barn No. 1	359	20
Shed between Horse Barns No. 3 & 4	822	20
Shed No. 6	2,060	20
Shed No. 23	3,967	20
Blacksmith Shop	1,025	20
Cement Storage House	607	20
Miller Sheds (Rockhold)	15,190	20
Thomas McKee Shed	840	20
Dutton Sheds (Swift)	5,535	20
Roundtree Shed (Swift)	17,011	20
Fire Protection Equipment	369	20
Swift Viaduct	1,549	20
Total	$534,275	
	$1,745,023	

EXTRACT FROM DECISION OF INTERSTATE COMMERCE COMMISSION IN TELEPHONE AND RAILROAD DEPRECIATION CHARGES, 118 I. C. C. 295, AT PAGES 353-356, INC.

"While it is generally agreed that depreciation expense should be evenly distributed in this way, not all factors in depreciation operate gradually, the effect of some being abrupt. The principle is fair, however, that *the cost resulting from the using up of property in service should be shared equally by the years which have had the benefit of the use.* The chief difference of opinion is as to whether the equal annual or monthly charges should be determined by the straight-line or the sinking-fund method.

"*The straight-line method is much the simpler of the two.* Under it the annual depreciation charge is obtained by merely dividing the estimated service value by the number of years of estimated service life. Thus, with a service value of $1,000 and a service life of 10 years, the annual depreciation charge is $100. Under the sinking-fund

method it is assumed that the depreciation installments will earn compound interest. The annual depreciation charges are so fixed, in other words, that these yearly payments plus the interest accumulations will equal service value at the expiration of service life. Assuming property with a service value of $1,000 and a service life of 10 years, and assuming interest at 5 per cent compounded annually, an annual charge of $79.50 will produce the required $1,000 at the end of the 10-year period. It will be seen that the annual charge is materially less under the sinking-fund than under the straight-line method.

"In considering the sinking-fund method it should be borne in mind that the depreciation reserve provided for in our classification is merely a piece of accounting machinery. Annual or monthly charges for depreciation are made to operating expense, and to offset these charges annual or monthly credits in like amounts are made to the reserve. The depreciation charges represent money reserved from earnings, so long as the company is not operated at a deficit. In ordinary practice, however, this money is not earmarked and segregated into a separate fund. It goes into the general cash fund and is available for corporate purposes. As a result it is ultimately used in the purchase of plant; in other words, as items of old property are used up through depreciation they are replaced by other items of new property of like cost. *In this way capital is maintained unimpaired.* The sinking-fund method, however, is based on the theory that money reserved from earnings by the depreciation charges shall be treated as a separate fund, the earnings from which, when invested, will not be available for general corporate purposes but will be returned to the fund and allowed to accumulate. *Obviously, also, if this method is to operate according to its design, the fund must be so invested that it can be depended upon to produce regular earnings at not less than a certain minimum rate. To produce this result with sufficient certainty the fund must ordinarily be invested, not in the plant of the company, but in approved investment securities.*

"The straight-line method has the approval of the telephone companies and of the steam railroad companies, if depreciation charges are to be required. *It also has the approval of most of the State and municipal authorities who were represented in these proceedings.* Certain of the State commissions prefer the sinking-fund method.

Upon analysis it develops that this preference rests upon a belief that the rate base should be the investment in the property of the company without deduction for accrued depreciation. This fact suggests and illustrates the radical difference in the theories underlying the two methods.

"*The straight-line method is based upon the theory that the property or capital of the company is continually being consumed in service and that the owners should be reimbursed therefor concurrently with the consumption.* Under this theory the funds reserved from earnings by the depreciation charges are immediately made available to the company for use for all corporate purposes. The owners cease to have a right to a return upon the portion of the property which has been consumed, but this loss is made up to them through the concurrent reimbursement. The funds so obtained by the company through this process of reimbursement may be used, if it desires, for the purchase of new property upon which a right to a fair return at once accrues. But this new property merely fills the hole caused by the partial consumption which is represented by the depreciation reserve. *The sinking-fund method, on the other hand, is based upon the theory that the company is entitled to a fair return upon all property maintained in condition for proper service, regardless of the fact that a part of its service life has been consumed, and that the owners should receive no reimbursement for property consumption until the unit has finally been retired.* Funds reserved from earnings by the depreciation charges are, therefore, segregated and allowed to accumulate at interest pending such ultimate reimbursement. They can not be used indiscriminately for corporate purposes but must be used to produce definite and reasonably assured earnings.

"The difference in theory is well illustrated by the following passage from the brief filed in behalf of the Public Service Commission of Oregon, that commission being one of the advocates of the sinking-fund method: 'Manifestly, the straight-line method of calculating depreciation *cannot properly be used in conjunction with an undepreciated rate base, nor should the sinking-fund principle be followed where a depreciated rate base is considered.* In other words, the public cannot equitably be required to pay for capital as it is consumed, *i. e.*, on the stright-line basis, and at the same time be required to pay a return upon such

consumed capital, *i. e.*, on on undepreciated rate base. *Nor should a utility company be asked or required to forego its legitimate return upon the full undepreciated value of its property unless its capital is fully repaid as rapidly as it is consumed.'*

"Granting the premises upon which they are based, both theories are logically sound. *In our opinion the premises which underlie the straight-line method are, as we have indicated in an earlier part of this report, in accord with the principles which have been enunciated by the Supreme Court of the United States.* This method is also much simpler and easier to apply. Nor are the practical results of the two methods very different, a fact which we have also noted and explained in the earlier discussion. *It is essential to bear in mind, however, that there is an inseparable connection between the straight-line method and the principle that accrued depreciation represented by the depreciation reserve must be deducted in ascertaining the rate-base value. If any other principle should hereafter be adopted by the courts, a reconsideration of the entire question of depreciation accounting would at once become necessary.*

"(3) *We therefore find that annual depreciation charges shall be computed at such percentage rate of the ledger value of the unit of property in question that the service value, as hereinbefore defined, may be distributed under the straight-line method in equal annual charges to operating expenses during the estimated service life of the unit. Annual charges so computed shall be reduced to a monthly basis by dividing by 12.*" (Emphasis ours)

EXTRACT FROM DECISION OF INTERSTATE COMMERCE COMMISSION IN TELEPHONE AND RAILROAD DEPRECIATION CHARGES, 177 I. C. C. 351, AT PAGES 408, 409, 410, 412, 413.

"*Straight-line method.*—This is the simplest and the one most generally used. It has the approval of the telephone companies, and, if depreciation charges are to be required, of the railroads. Most of the State and municipal authorities who are represented in these proceedings favor it, but some of the State commissions prefer the sinking-fund method, and at least one State commission is known to favor what is called below the annuity method. Under the straight-line method the annual depreciation charge is ob-

tained by dividing the estimated service value by the number of years of estimated service life. Thus, with a service value of $1,000 and a service life of 10 years, the annual depreciation charge is $100.

"*Sinking-fund method.*—The principle underlying this method, which has many forms, is that the depreciation installments will in one way or another earn compound interest. The annual depreciation charges are so fixed, in other words, that these yearly installments plus the interest accumulations will equal service value at the expiration of service life. Under the form which this method ordinarily takes, these annual charges would be uniform. Thus, with a service value of $1,000, a service life of 10 years, and an assumed interest rate of 6 per cent compounded annually, an annual charge of $75.87 will produce the required $1,000 at the end of the 10-year period. * * *

"In considering the merits of these methods the factor of fair return must be taken into account. *As we conceive of the straight-line method, it necessarily involves the proposition that the property of the company is continually being consumed in service and that the owners should be reimbursed therefor concurrently with the consumption.* By consumption is meant loss in service capacity. The funds reserved from income through the depreciation charges provide the reimbursement. The owners cease, of course, to have a right to a return upon that portion of the property which has been consumed, but the loss is made up to them by the depreciation charges, if the latter prove adequate. The funds so obtained through this process of reimbursement may be used, if the company desires, for the acquisition of new property upon which a right to a fair return at once accrues. But this new property merely fills the hole caused by the partial consumption which is reflected by the depreciation reserve. For the reasons which have already been stated there may be some actual difference between the credit balance in the depreciation reserve and the amount of accrued depreciation found upon examination, at any particular time, to exist in the property. But the intent is that, apart from variations which may result from the use of a different base or from the fact that depreciation accounting has not been employed from the beginning, the reserve shall reflect the actual depreciation.

"As we conceive of the sinking-fund method, it necessarily involves the proposition that the owners are not to be reimbursed for property consumed in service until the time when consumption becomes complete and the property is actually retired. In the meantime the funds reserved from income through the depreciation charges are allowed to accumulate at compound interest pending such ultimate reimbursement. They can be invested for this purpose in interest-bearing securities or in the company's own property. *A corollary of the theory seems to be that in determining the value of the property upon which the company is entitled to a fair return no deduction should be made for accruing depreciation which is not as yet complete.* * * *

"It will be noted that the sinking-fund method and the annuity method produce exactly the same result, when consideration is given to the total burden upon the public, consisting of fair return and depreciation charge combined. On the other hand, the burden under the straight-line method is greater during the first half of the service life than under the other methods, and less during the last half. The sinking-fund and annuity methods are much the same in underlying principle, and it may be that from a scientific and theoretical standpoint the annuity method is the soundest of all. We can not speak with assurance on that point, because of the fact that this method was not presented at the hearings where it could be subjected to the tests of analysis and cross-examination.

"It appears that in operation the sinking-fund method involves complexities and important practical difficulties. *It is easy, for purposes of illustration, to assume an interest rate, but in actual practice this rate must be governed by the facts. If the reservations from income are invested in the company's physical property, the rate can not be greater than is actually earned, and if earnings fluctuate widely, as they often do in the case of railroads generally, or if they are normally poor, as in the case of some railroads, the practical difficulties which the sinking-fund method may involve are evident.* These difficulties might perhaps be minimized, although not eliminated, by requiring the creation of a separate fund and its investment in approved securities. But there is little support for such a requirement, and it would result in depriving the company of the opportunity, often of great advantage, of using these moneys in building up its physical property. If the latter course were

followed and the operations of the company were very profitable, it might perhaps be permissible to use an interest rate lower than is actually earned; but certainly under such circumstances the rate ought not to be less than the percentage of a fair return, and that percentage may vary from time to time with changing conditions. Of course the results of the sinking-fund method will differ materially dependent upon the particular rate of interest which is used, and no one has suggested a means of combining it with a fluctuating rate of interest. • • •

"The straight-line method has the merit of simplicity and ease of practical application, and that is no doubt why it has so generally been used. Moreover, as applied to the business of a railroad or telephone company of normal size, having a great variety of property installed at many different dates, the results, provided the plan is followed to its logical conclusion, are not widely different from those attained by other methods. It must be conceded that it is likely, in general, to result in a combined depreciation charge and fair return somewhat greater than will be produced by other methods, but at best depreciation accounting must necessarily be an approximation, and the slight error resulting from the use of the straight-line method is one which can be offset by resolving doubts in favor of longer rather than shorter service lives. We are disposed to abide by the finding in our prior report in favor of the straight-line method. *It is the method which has consistently been used in our valuation proceeding. On the record before us, indeed, we would hardly be justified in reaching any other conclusion.*

"This conclusion, it should also be said, is associated with the confidence we entertain that the courts, when the issues and facts are made entirely clear to them, will recognize the connection and inter-relation between the depreciation in accounting and in valuation which have been pointed out hereinbefore." (Emphasis ours)

This is a rough sketch intended to illustrate location of the zones and transfers discussed in the argument relating to land values in Zone A.